

APPENDIX COLLOCATION

TABLE OF CONTENTS

1. INTRODUCTION	3
2. DEFINITIONS.....	4
3. PURPOSE AND SCOPE OF AGREEMENT	7
4. GENERAL OFFERINGS.....	13
5. SPACE AVAILABILITY.....	23
6. DENIAL OF COLLOCATION EQUIPMENT.....	28
7. DEDICATED COLLOCATION SPACE CHARGES	29
8. USE OF DEDICATED COLLOCATION SPACE.....	33
9. OPERATIONAL RESPONSIBILITIES	38
10. VIRTUAL COLLOCATION.....	41
11. CASUALTY LOSS.....	42
12. RE-ENTRY	43
13. LIMITATION OF LIABILITY.....	43
14. INDEMNIFICATION OF <u>SBC-13STATE</u>	45
15. OSHA STATEMENT.....	45
16. NOTICES	45
17. INSURANCE	47
18. PROTECTION OF SERVICE AND PROPERTY.....	49
19. MISCELLANEOUS	51
20. APPLICABILITY OF OTHER RATES, TERMS AND CONDITIONS.....	54

APPENDIX COLLOCATION**1. INTRODUCTION**

- 1.1 This Appendix sets forth terms and conditions for Collocation provided by the applicable SBC Communications Inc. (SBC) owned Incumbent Local Exchange Carrier (ILEC) and CLEC.
- 1.2 SBC Communications Inc. (SBC) means the holding company which owns the following ILECs: Illinois Bell Telephone Company, Indiana Bell Telephone Company Incorporated, Michigan Bell Telephone Company, Nevada Bell, The Ohio Bell Telephone Company, Pacific Bell Telephone Company, The Southern New England Telephone Company, Southwestern Bell Telephone Company and/or Wisconsin Bell, Inc. d/b/a Ameritech Wisconsin.
- 1.3 **SBC-13STATE** - As used herein, **SBC-13STATE** means the applicable above listed ILECs doing business Arkansas, California, Connecticut, Illinois, Indiana, Kansas, Michigan, Missouri, Nevada, Ohio, Oklahoma, Texas, and Wisconsin.
- 1.4 **SBC-12STATE** - As used herein, **SBC-12STATE** means the applicable above listed ILEC(s) doing business in Arkansas, California, Illinois, Indiana, Kansas, Michigan, Missouri, Nevada, Ohio, Oklahoma, Texas, and Wisconsin.
- 1.5 **SBC-8STATE** - As used herein, **SBC-8STATE** means an applicable above listed ILEC(s) doing business in Arkansas, California, Connecticut, Kansas, Missouri, Nevada, Oklahoma, and Texas.
- 1.6 **SBC-7STATE** - As used herein, **SBC-7STATE** means the applicable above listed ILEC(s) doing business in Arkansas, California, Kansas, Missouri, Nevada, Oklahoma, and Texas.
- 1.7 **SBC-AMERITECH** - As used herein, **SBC-AMERITECH** means the applicable above listed ILEC(s) doing business in Illinois, Indiana, Michigan, Ohio, and Wisconsin.
- 1.8 **SBC-MOKA** - As used herein, **SBC-MOKA** means the applicable above listed ILEC doing business in Arkansas, Kansas, Missouri, and Oklahoma.
- 1.9 **SWBT-TX** -As used herein, **SWBT-TX** means the applicable SBC owned ILEC doing business in Texas.
- 1.10 **AM-MI** - As used herein, **AM-MI** means the applicable SBC owned doing business in Michigan.

- 1.11 **AM-IN** - As used herein, **AM-IN** means the applicable SBC owned ILEC doing business in Indiana.
- 1.12 **AM-IL** - As used herein, **AM-IL** means the applicable SBC owned ILEC doing business in Illinois.
- 1.13 **AM-WI** - As used herein, **AM-WI** means the applicable SBC owned ILEC doing business in Wisconsin.
- 1.14 **AM-OH** - As used herein, **AM-OH** means the applicable SBC owned ILEC doing business in Ohio.
- 1.15 **PACIFIC** - As used herein, **PACIFIC** means the applicable above listed ILEC doing business in California.
- 1.16 **NEVADA** - As used herein, **NEVADA** means the applicable above listed ILEC doing business in Nevada.
- 1.17 **SNET** - As used herein, **SNET** means the applicable above listed ILEC doing business in Connecticut.

2. DEFINITIONS

- 2.1 **“Active Central Office Space”** denotes the existing, central office switchroom space, which can be designated for physical or virtual collocation, with sufficient infrastructure systems. *Also denotes central office space that may contain obsolete unused equipment.*
- 2.2 **“Adjacent Structure”** is a Collocator provided structure placed on **SBC-13STATE** property adjacent to an Eligible Structure. This arrangement is only permitted when space is legitimately exhausted inside the Eligible Structure and to the extent technically feasible.
- 2.3 **“Application Fee”** includes the costs incurred by **SNET/PACIFIC/NEVADA** to process the Collocator’s application for physical collocation arrangements.
- 2.4 **“Augment”** is a request from a Collocator to add equipment, cable, and/or Collocation services to an existing physical collocation arrangement.

- 2.5 **“Caged Physical Collocation”** is a cage or similar structure (not including a top) enclosing Collocator’s dedicated collocation space in which a Collocator may install its telecommunications equipment.
- 2.6 **“Cageless Physical Collocation”** is a Collocation arrangement, provided in single bay increments, and does not require the construction of a cage or similar structure.
- 2.7 **“Collocation Area for Physical Collocation”** is the common area providing access to an area surrounding the Collocator’s dedicated space *as well as the space dedicated to Collocators*.
- 2.8 **“Collocation Interconnection Power Panel (CIPP)”** (**SBC- 8STATE ONLY**) is a DC Power panel for Power termination. *Two DC Power panels are available: (1) A DC power panel designed to provide either 20, 40 or 50 (Maximum) AMPS (redundant) of DC voltage, (2) A DC Power Panel designed to provide either 100 or 200 (Maximum) AMPS (redundant) of DC voltage.*
- 2.9 **“COBO”** the Central Office Out that represents the typical conditioning costs (not to include Extraordinary Expenses) to make an unused Premises space suitable for a collocation arrangement (Dedicated Collocation Space) in **SBC-AMERITECH**.
- 2.10 **“Collocator”** is any individual, partnership, association, joint-stock company, trust corporation, or governmental entity or any other entity who is collocated in Utility location, for purposes of Interconnection with the Utility or access to Unbundled Network Elements (UNE).
- 2.11 **“Dedicated Collocation Space”** is the space dedicated for the Collocator’s physical collocation arrangement located within a **SBC-13STATE** Eligible Structure.
- 2.12 **“Delivery Date”** the date upon which the CLEC or Requesting Carrier will be provided the collocated space or Dedicated Collocation Space in **SBC-AMERITECH**.
- 2.13 **“Eligible Structure”** is (1) a **SBC-13STATE** central office, serving wire center or tandem office, or (2) a building or similar structure owned or leased by **SBC-13STATE** that houses its network facilities, or (3) a structure that houses **SBC-13STATE** transmission facilities on public rights-of-way.
- 2.14 **“Engineering Design Charge”** is the cost for **SBC-MOKA** employees to perform the central office survey for caged and cageless serving arrangements and to implement the collocation area.

- 2.15 **“Extraordinary Costs** or extraordinary expenses include such items as asbestos removal, fire suppression system or containment, modifications or expansion of cable entry facility, individualized DC power system infrastructure needs, increasing the capacity of the AC system, or the existing commercial power facility requirements, installation, maintenance, repair, monitoring of securing measures, conversion of non-collocation space, compliance with federal and state requirements or other modifications required by local ordinances in **SBC-AMERITECH**.
- 2.16 **“Individual Case Basis (ICB)”** is a pricing method used for services that are not tariffed.
- 2.17 **“Interconnector’s Collocation Services Handbook”** is a publication provided to the CLECs which provides information on how to order collocation arrangements from **SBC-8STATE**. The document also provides information about **SBC-8STATE**’s collocation processes and requirements and is located on the CLEC website (<https://clec.sbc.com/>)
- 2.17.1 **SBC-AMERITECH** provides similar information at a website (<http://tcnet.ameritec.com/>)
- 2.18 **“Occupancy date”** the date that **SBC-AMERITECH** may begin billing recurring charges and the Dedicated Collocation Space is made available for occupancy by the CLEC or Requesting Carrier.
- 2.19 **“Other Central Office Space”** denotes the space within the central office which can be designated for physical collocation where infrastructure systems do not currently exist and must be constructed.
- 2.20 **“Preparation Charges”** are the charges applicable to the preparation of **SBC-AMERITECH** Premises for Collocation, including any COBO charges, cage enclosure charges, cage enclosure charges, and extraordinary charges or expense.
- 2.21 **“Point of Termination (POT)”** denotes the point of demarcation, within an Eligible Structure at which the **SBC-13STATE** responsibility for the provisioning of service ends.
- 2.22 **“Project Coordination Fee”** reflects **SNET/PACIFIC/NEVADA**’s labor costs to manage the provisioning of the individual Collocator’s space requirements for a particular physical collocation space request. This fee is applicable upon the submission of an application.

- 2.23 **“Shared Physical Collocation Cage”** is a caged dedicated collocation space that is shared by two or more Collocators within the **SBC-13STATE**’s Eligible Structure.
- 2.24 **“Unused Space”** denotes any space in the Eligible Structure which is not occupied by **SBC-13STATE** personnel and/or occupied by or reserved for **SBC-13STATE** network equipment including affiliates and 3rd parties. May also be used to denote space within a specific Collocator’s area that is not occupied by or reserved for Collocator’s equipment. (See also sections 4.1.2.1, 4.1.3.1, 5.12, & 10.1)

3. PURPOSE AND SCOPE OF AGREEMENT

- 3.1 The Parties agree that this Agreement does not constitute, and shall not be asserted to constitute, an admission or waiver or precedent with the State Tariffs in California, Texas, Connecticut, Illinois, Michigan, Wisconsin or the State Commission, the Federal Communications Commission, any other regulatory body, any State or Federal Court, or in any other forum that **SBC-13STATE** has agreed or acquiesced that any piece of Collocator equipment or facility is “equipment necessary for interconnection or access to unbundled network elements” under 47 U.S.C. 251(c)(6).
- 3.2 Nothing in this agreement requires **SBC-13STATE** to permit collocation of equipment used solely for switching (e.g. 5ESS, DMS 100, etc.) or solely to provide enhanced services; provided, however, that **SBC-13STATE** may not place any limitations on ability of Collocator to use all features, functions, and capabilities of collocated equipment including switching and routing features and functions and enhanced services functionalities if such equipment is necessary for access to UNEs or for interconnection with **SBC-13STATE**’s network. **SBC-13STATE** may require Collocator’s employees to undergo the same level of security training, or its equivalent, that **SBC-13STATE**’s own employees, or third party contractors providing similar functions must undergo; provided that **SBC-13STATE** may not require Collocator’s employees to receive such training from **SBC-13STATE** itself, but must provide information to Collocator on the specific type of training required so Collocator’s employees can conduct their own training.
- 3.3 **Submission to State Commission**
- 3.3.1 The effectiveness of this Agreement is conditioned upon the unqualified approval of this Agreement, whether as a result of an approval process or by operation of law, under 47 U.S.C. 252(a)(1). After execution of this Agreement, **SBC-13STATE** and parties shall submit it to the State commission for the State in which Collocator desires physical collocation as thereby required for approval, and shall defend the Agreement and support any reasonable effort to have this Agreement so approved,

including the supplying of witnesses and testimony if a hearing is to be held.

3.4 Failure to Receive Approval

- 3.4.1 In the event that this Agreement does not receive such unqualified approval, this Agreement shall be void upon written notice of either party to the other after such regulatory action becomes final and unappealable. Thereafter Collocator may request to begin negotiations again under 47 U.S.C. 251. Alternatively, **SBC-13STATE** and parties may both agree to modify this Agreement to receive such approval, but neither shall be required to agree to any modification. Any agreement to modify shall not waive the right of either party to pursue any appeal of the ruling made by any reviewing regulatory commission.

3.5 Preparation Prior to Regulatory Approval

- 3.5.1 Upon the written request of Collocator, **SBC-13STATE** shall consider an application for collocation space submitted prior to receiving the approval required by Section 3.3. Upon such an election, this Agreement shall become effective but only insofar as to be applicable to the consideration of an application for collocation space. In the event that the Agreement does not become fully effective as contemplated by this Section, Collocator shall not be entitled to any refund or return of any such payments beyond any portion of the charges paid but not attributable to costs incurred by **SBC-13STATE**. To the extent that **SBC-13STATE** has incurred preparation costs not included within any payment made by Collocator, Collocator shall pay those costs within thirty (30) days of notice by **SBC-13STATE**.

- 3.6 Price Quote or Response Intervals are as follows and will run concurrent with the ten (10) day notification interval for availability of space. The Price Quote (Quotation) Interval relates to the period in which **SBC-8STATE** will provide the CLEC with a quotation of rates and a Construction Interval for the desired arrangement. The Notification Interval relates to the interval in which **SBC-AMERITECH** will provide the CLEC with a quotation of the COBO (Central Office Build Out), if applicable, and space availability. The Notification Interval is the time period at the end of which **SBC-13STATE** must advise the CLEC if space is available for the Collocation arrangement requested.

3.6.1 SBC-MOKA

<i>Number of Applications By One Collocator Within 5 Days</i>	<i>Quotation Interval</i>
1 – 5	35 Business Days
6 – 10	40 Business Days
11 - 15	45 Business Days

Should Collocator submit sixteen (16) or more applications within five (5) business days, the quotation interval will be increased by five (5) business days for every five (5) additional applications or fraction thereof. Any material revision to an application will be treated as a new application and will be subject to the time intervals set forth above.

3.6.2 SBC-AMERITECH

<i>Number of Applications By One Collocator Within 5 Days</i>	<i>Response Interval (Business Days)</i>
1 – 5	10 Business Days
6 – 10	15 Business Days
11 - 15	20 Business Days

Should Collocator submit sixteen (16) or more applications within five (5) days, the quotation response will be increased by five (5) business days for every five (5) additional applications or fraction thereof. Any material revision to an application will be treated as a new application and will be subject to the time intervals set forth above.

3.6.3* PACIFIC

<i>Number of Applications By One Collocator Within 5 Days*</i>	<i>Response Interval*</i>
1 – 10	10 Days
11 – 20	20Days
21 - 30	30 Days

* Available only in the State of California. Refer to INTERCONNECTION AGREEMENT: GENERAL TERMS AND CONDITIONS Paragraph 2.10.1.

Should Collocator submit thirty-one (31) or more applications within ten (10) business days, the quotation interval will be increased by ten (10) business days for every ten (10) additional applications or fraction thereof. Any material revision to an application will be treated as a new application and will be subject to the time intervals set forth above.

3.6.4 **NEVADA**

<i>Number of Applications by One Collocator Within 5 Days</i>	<i>Quotation Interval</i>
1 – 10	35 Days
11 – 20	45 Days
21 – 30	55 Days

Should Collocator submit thirty-one (31) or more applications within ten (10) business days, the quotation interval will be increased by ten (10) business days for every ten (10) additional applications or fraction thereof. Any material revision to an application will be treated as a new application and will be subject to the time intervals set forth above.

3.6.5** **SNET**

<i>Number of Applications By One Collocator Within 5 Days</i>	<i>Quotation Interval</i>
1 – 5	30 Business Days
6 – 10	40 Business Days
11 - 15	45 Business Days
16-20	50 Business Days

Should Collocator submit twenty-one (21) or more applications within five (5) business days, the quotation interval will be increased by five (5) business days for every five (5) additional applications or fraction thereof. Any material revision to an application will be treated as a new application and will be subject to the time intervals set forth above.

3.6.6 Collocator may obtain a shorter interval for the return of price quotes or responses than that set forth above by scheduling a meeting with **SBC-**

** Available only in the State of Connecticut. Refer to INTERCONNECTION AGREEMENT: GENERAL TERMS AND CONDITIONS Paragraph 2.10.1.

13STATE at least twenty (20) business days prior to submission of the first application to discuss, coordinate and prioritize Collocator applications.

- 3.6.7 In **SBC-MOKA/SNET/NEVADA**, the Collocator has sixty-five (65) business days from receipt of the quotation to accept the quotation. The quotation expires after sixty-five (65) business days. After sixty-five (65) business days, a new application, application fee, and engineering design charge are required.

3.7 Construction Intervals

- 3.7.1 **SBC-MOKA/SNET/SBC-AMERITECH** will complete construction of all Active Central Office Switchroom Space requests for caged, shared, and cageless collocation in 90 days from the receipt of Collocator's acceptance of the quotation or initial COBO (Central Office Build Out).

- 3.7.2 Unless otherwise mutually agreed to by the Parties in writing, where power does not exist or in Other Central Office Space, **SBC- MOKA/SNET/SBC-AMERITECH** will complete construction of requests for caged, shared, or cageless collocation within 180 days from receipt of Collocator's acceptance of the quotation.

3.7.3*** Caged Collocation Installation Interval – **PACIFIC/NEVADA**

- 3.7.3.1 Dedicated space for Cageless physical collocation is reserved upon notification to the Collocator that space is available.
- 3.7.3.2 Should the Collocator submit 11 or more applications within 10 business days the provisioning interval will be increased by 10 business days for every 10 additional applications.
- 3.7.3.3 Where space that is suitable for central office equipment (Active Central Office Space) is available, **PACIFIC/NEVADA** will deliver Caged Collocation within 120 business days from the completion of the application process.
- 3.7.3.4 Where space that is not suitable for central office equipment (Other Central Office Space) must be converted to Active Central Office Space, the provisioning interval will be 150 days.

***Available only in the State of California and Nevada. Refer to INTERCONNECTION AGREEMENT: GENERAL TERMS AND CONDITIONS Paragraph 2.10.1.

3.7.3.5 Any material revision to a completed application will be treated as a new application following revision.

3.7.4 Cageless Collocation Installation Interval – **PACIFIC/NEVADA***

3.7.4.1 Dedicated space for Cageless physical collocation is reserved upon Notification to the Collocator that space is available.

3.7.4.2 Should the Collocator submit 11 or more applications within 10 business days the provisioning interval will be increased by 10 business days for every 10 additional applications.

3.7.4.3 Where space is suitable for central office equipment (active Central Office Space) is available, **PACIFIC/NEVADA** will deliver Cageless collocation within 110 Calendar days from the completion of the application process.

3.7.4.4 Where space that is not suitable for central office equipment (Other Central Office Space) is converted to Active Central Office Space, the Provisioning interval will be 140 days from the completion of the Application process.

3.7.5 Adjacent Structure Collocation Installation Intervals

3.7.5.1 **SBC-13STATE** installation interval, rates, terms and conditions for Adjacent Structures Collocation will be determined on an individual case basis (ICB)/Non Standard Collocation Request (NSCR).

3.7.6 CLEC Installation Intervals

3.7.6.1 CLEC will, whenever possible, place their telecom equipment in the dedicated space within 30 calendar days of space turnover. CLEC must complete placement of CLEC Telecom Equipment in the Dedicated Space and interconnect to **SBC-13STATE**'s network or to its unbundled network elements within one hundred eighty (180) calendar days after space turnover. If CLEC fails to do so, **SBC-13STATE** may, upon notice, terminate that Physical Collocation arrangement, and CLEC shall be liable in an amount equal to the unpaid balance of the charges due under and, further, shall continue to be bound by the provisions of this Appendix, the terms or context of which indicate continued viability or applicability beyond termination.

For purposes of this Section, CLEC Telecom Equipment is considered to be interconnected when physically connected to **SBC-13STATE**'s network or a **SBC-13STATE** unbundled network element for the purpose of CLEC providing a telecommunications service.

3.8 Augments

- 3.81. **SBC-13STATE** shall allow CLEC to augment its collocation space when they reach a 60 percent utilization rate and shall allow CLEC to begin the applications process prior to reaching the 60% utilization rate if CLEC expects to achieve 60% utilization before the process is completed.

4. GENERAL OFFERINGS

- 4.1 Except where physical collocation is not practical for technical reasons or because of space limitations, **SBC-13STATE** will provide physical collocation to CLEC for the purpose of interconnecting with **SBC-13STATE**'s network or for obtaining access to **SBC-13STATE**'s unbundled network elements pursuant to 47 U.S.C. 251(c). Physical collocation shall be provided on a non-discriminatory basis, on a "first-come, first served" basis, and otherwise in accordance with the requirements of the Act (including 47 U.S.C. 251(c)(6), and applicable FCC rules thereunder. **SBC-13STATE**'s physical collocation offering includes the following:

4.1.1 Caged Physical Collocation

- 4.1.1.1 In the **SBC-13STATE**'s, CLEC may apply for Caged Physical Collocation in initial and subsequent increments of 50 square feet. The caged serving arrangement is an area designated by **SBC-13STATE** within an Eligible Structure to be used by a CLEC for the sole purpose of installing, maintaining and operating Collocator provided equipment. **SBC-13STATE** will provide floor space, floor space conditioning, cage common systems and safety and security on a per square foot basis. **SBC-13STATE** will prorate the charge for site conditioning and preparation undertaken to construct or condition the collocation space so the first Collocator in a **SBC-13STATE** premise will not be responsible for the entire cost of site preparation.

4.1.2 Shared Caged Collocation

4.1.2.1 Upon request, **SBC-13STATE** shall provide CLEC Shared Caged Collocation in any Unused Space. **"Shared Caged Collocation"** is caged Physical Collocation space shared by CLEC and one or more other CLECs pursuant to terms and conditions agreed upon by such carriers.

4.1.2.1.1 A CLEC may request that **SBC-13STATE** provide Shared Caged Collocation via a new request for Physical Collocation whereby the CLEC requesting such space allocates the requested space among the number of CLECs initially requesting such space (**"New Shared Collocation"**) or a request by CLEC to enter into a sublease arrangement with another Resident Collocators(s) in CLEC's existing Physical Collocation (**"Subleased Shared Collocation"**). In each Shared Caged Collocation arrangement, **SBC-13STATE**'s single point of contact (SPOC) with respect to such arrangement shall be referred to as the **"Primary Collocator"**. For New Shared Collocation, the Primary Collocator shall be the single CLEC that submits the request for New Shared Collocation on behalf of the other Resident Collocators. For Subleased Shared Collocation, the Primary Collocator shall be the CLEC that originally requested and occupied such space and is the sublessor in such arrangement. For purposes of this section, each CLEC (including Resident Collocator(s) and the Primary Collocator) to a Shared Caged Collocation arrangement is sometimes referred to as a **"Resident Collocator"**. An order for Shared Caged Collocation shall include blanket letters of authorization signed by the Primary Collocator that authorize each other Resident Collocator to utilize the Connecting Facility Assignments associated with the Primary Collocator and signed by each Resident Collocator that authorize the Primary Collocator to request and place firm orders for Shared Caged Collocation and facilities on behalf of such Resident Collocators.

4.1.2.1.2 New Shared Collocation is available in minimum increments of fifty (50) square feet (per caged space dimensions, not per CLEC Resident Collocators shall request New Shared Collocation from **SBC-13STATE** in a single application. A request and any subsequent order for New Shared Collocation shall be submitted by the Primary Collocator. When making New Shared Collocation available, **SBC-13STATE** shall not, except as otherwise specifically required to accommodate a Resident Carrier's specific instructions, increase the Preparation Charges above the cost of provisioning a cage of similar dimensions and materials to a single collocating CLEC. **SBC-13STATE** will prorate the Preparation Charges incurred by **SBC-13STATE** to construct the shared Collocation cage or condition the space for Collocation use among the Resident Collocators utilizing the New Shared Collocation space, by determining the total preparation charges to make that space available and allocating that charge to each Resident Collocator based on the percentage attributable to each Resident Collocator as provided on the Collocation order by the Primary Collocator, provided that the percentage divided among the Resident Collocators in a New Shared Collocation space equals one hundred percent (100%) of such Preparation Charges. Allocation of Preparation Charges shall occur only upon the initial delivery of New Shared Collocation and **SBC-13STATE** shall not be required to adjust such allocation if another Resident Collocator subsequently shares such space. Except with respect to prorated Preparation Charges, **SBC-13STATE** shall bill only the Primary Collocator for, and the Primary Collocator shall be the primary obligor with respect to the payment of, all charges other than Preparation Charges billed on New Shared Collocation. It is the Primary Collocator's responsibility to recover from each other Resident Collocator such CLEC's proportionate share of such other charges billed to the Primary Collocator for the New Shared Cage Collocation. If CLEC is a Resident Collocator but not the Primary Collocator in a New Shared Collocation arrangement, CLEC agrees that the rates,

terms and conditions of the Collocation provisions of the Primary Collocator's Section 251/252 agreement shall apply to its New Shared Collocation arrangement in lieu of those set forth herein. Further, if CLEC is the Primary Collocator in a New Shared Collocation arrangement, as a condition of ordering New Shared Allocation, CLEC shall require its Resident Collocator(s) to execute an agreement prior to the Delivery Date that, inter alia, requires such Resident Collocator(s)' compliance with the terms, conditions and restrictions relating to Collocation contained in this Agreement and designates **SBC-13STATE** as a third party beneficiary of such agreement. CLEC, acting in its capacity as Primary Collocator, shall notify its Resident Collocator(s) of the obligation to comply with the Collocation provisions of this Agreement and shall be responsible for any breach of such provisions by the Resident Collocator(s).

- 4.1.2.1.3 For Subleased Shared Collocation, if the CLEC is the Primary Collocator, then CLEC shall be responsible for its and its Resident Collocator's compliance with the terms, conditions and restrictions of this Agreement. As a condition to permitting another CLEC to sublease space from CLEC, CLEC shall require such other CLEC(s) to execute a sublease agreement prior to the Delivery Date that, inter alia, requires such CLEC's compliance with the terms, conditions and restrictions relating to Collocation contained in this Agreement and designates **SBC-13STATE** as a third party beneficiary of such agreement. CLEC, acting in its capacity as Primary Collocator, shall notify its Resident Collocator(s) of the obligation to comply with the Collocation provisions of this Agreement and shall be responsible for any breach of such provisions by the Resident Collocator(s). If CLEC is the sublessee (i.e., not the Primary Collocator) in a Subleased Shared Collocation arrangement, CLEC agrees that the rates, terms and conditions of the Collocation provisions of the Primary Collocator's Section 251/252 agreement shall apply to its Subleased Shared Collocation arrangement in lieu of those set forth herein.

4.1.2.1.4 The Primary Collocator represents and warrants to **SBC-13STATE** that each Resident Collocator with which it shares Shared Caged Collocation space shall Collocate equipment only as permitted by **5.1** and which is necessary to Interconnect with **SBC-13STATE** or for access to **SBC-13STATE**'s unbundled Network Elements. **SBC-13STATE** shall provide CLEC access to **SBC-13STATE**'s unbundled Network Elements and permit CLEC to Interconnect its network with **SBC-13STATE** from Shared Caged Collocation, regardless if CLEC was the original Collocator. CLEC, however, shall have no right to request and **SBC-13STATE** shall have no obligation to provide CLEC's Resident Collocators access to **SBC-13STATE**'s unbundled Network Elements or **SBC-13STATE**'s network. Instead, a Resident Collocator's rights shall be as determined by such Resident Collocator's contractual arrangement (Section 251/252 agreement or tariff, as applicable) with **SBC-13STATE**.

4.1.2.1.5 As a condition of entering into Shared Caged Collocation, CLEC agrees that if it is not the Primary Collocator in a New Shared Collocation, or if it is the sublessee in a Subleased Shared Collocation arrangement, it unconditionally and irrevocably undertakes and guarantees **SBC-13STATE** the prompt and full payment of any charges assessed on the Shared Caged Collocation. If the Primary Collocator in a Shared Caged Collocation arrangement no longer occupies the space, the other Resident Collocators must immediately identify a new Primary Collocator. If only one CLEC remains in the Shared Cage Collocation, that CLEC shall become the Primary Collocator. **SBC-13STATE** shall bill the new Primary Collocator any applicable charges to change **SBC-13STATE**'s records and databases to reflect such new Primary Collocator.

4.1.3 **Cageless Physical Collocation**

4.1.3.1 Subject to technical feasibility and security requirements, **SBC-13STATE** will allow CLEC to collocate in any unused space (space that is vacant and does not contain **SBC-13STATE** equipment, is not

reserved for growth, is not used for administrative or other functions, and is not needed for access to, egress from, or work within occupied or reserved space) in **SBC-13STATE**'s Eligible Structure (eg. Central Office), without requiring the construction of a cage or similar structure, and without requiring the creation of a separate entrance to CLEC's dedicated space. **SBC-13STATE** will designate the space to be used for cageless collocation. **SBC-13STATE** may require CLEC to use a central entrance to the building in which the cageless collocation is provided, but may not require construction of a new entrance for CLEC's or other collocating carriers' use, and once inside the building, **SBC-13STATE** must permit CLEC to have direct access to CLEC's equipment.

4.1.3.2 **SBC-13STATE** may not require CLEC to use an intermediate interconnection arrangement (i.e., a POT bay) that simply increases collocation costs without a concomitant benefit to incumbents, in lieu of direct connection to **SBC-13STATE**'s network if technically feasible. In addition, **SBC-13STATE** may not require CLEC to collocate in a room or isolated space, separate from **SBC-13STATE**'s own equipment, which only serves to increase the cost of collocation and decrease the amount of available collocation space. **SBC-13STATE** may take reasonable steps to protect its own equipment, such as, but not limited to, enclosing **SBC-13STATE** equipment in its own cage, and other reasonable security measures examples of which are described herein. **SBC-13STATE** may utilize reasonable segregation requirements that do not impose unnecessary additional cost on CLEC.

4.1.3.3 **SBC-13STATE** must make cageless collocation space available in single-bay increments, meaning that CLEC can purchase space in single bay increments. **SBC-13STATE** will prorate the charge for site conditioning and preparation undertaken to construct or condition the collocation space so the first Collocator in a **SBC-13STATE** premise will not be responsible for the entire cost of site preparation.

4.1.4 Adjacent Structure Collocation

4.1.4.1 When space is legitimately exhausted inside an **SBC-13STATE** Eligible Structure, **SBC-13STATE** will permit CLEC to physically collocate in an Adjacent Structure (e.g. controlled environmental vaults or similar structures such as those used by **SBC-13STATE** to house telecommunications equipment) to the extent technically

feasible. **SBC-13STATE** will permit CLEC to construct or otherwise procure such adjacent structure, subject to reasonable safety and maintenance requirements, zoning and other state and local regulations, and **SBC-13STATE**'s right to exercise reasonable control over the design, construction, and placement of such Adjacent Structures. **SBC-13STATE** will allow the CLEC to provide equipment installed within the Adjacent Structure. CLEC will be responsible for securing the required licenses and permits, the required site preparations, and will retain responsibility for building and site maintenance associated with placing the Adjacent Structure. **SBC-13STATE** may reserve reasonable amounts of space adjacent to its Eligible Structure needed to expand its Eligible Structure to meet building growth requirements. **SBC-13STATE** will assign the location of the Designated Space where the Adjacent Structure will be placed.

4.1.4.2 When requested, **SBC-13STATE** will provide up to 100 AMPS of AC power to the Adjacent Structure when Central Office Switchboard AC capacity exists and up to 200 AMPS of DC power to the Adjacent Structure up to 200 cable feet from the Central Office power source. When power requirements are beyond these office capacities and distance limitations, **SBC-13STATE** will treat the requirements as a non-standard request (ICB or NSCR) and coordinate a mutually agreeable solution for provisioning power with CLEC. At its option, CLEC may choose to provide its own AC and DC power to the Adjacent Structure. **SBC-13STATE** will provide power and physical collocation services and facilities to such Adjacent Structures, subject to the same nondiscrimination requirements as other physical collocation arrangements in this Agreement.

4.2 All requests for Other Physical Collocation arrangements will be considered on a case-by-case basis (ICB or NSCR). When CLEC requests a particular collocation arrangement, the CLEC is entitled to a rebuttable presumption that such arrangement is technically feasible if any incumbent LEC with a substantially similar network has deployed such collocation arrangement in any incumbent LEC Dedicated Space. If **SBC-13STATE** refuses to provide a collocation arrangement, or an equally cost effective arrangement, it may do so if it rebuts the presumption before the state commission that the particular premises in question cannot support the arrangement because of either technical reasons or lack of space.

- 4.3 **Interconnection Arrangement-** **SBC-13STATE** shall provide, at the request of the CLEC, the connection between the CLEC's optional POT frame or equipment bay and the **SBC-13STATE** network. The CLEC cannot provide the connection. The CLEC will not be permitted access to the **SBC-13STATE** Main Distribution Frame or Intermediate Distribution Frame. If regeneration equipment is required, for any reason, it will be at the CLEC's expense. Interconnection Arrangements options are as follows: DS0 Arrangement, DS1 Arrangement, DS3 Arrangement and Fiber Arrangement.
- 4.4 **SBC-13STATE** shall provide, at the request of CLEC, the connection between the equipment in the physical collocation spaces of two or more telecommunications carriers. Available connections include copper cable, coaxial cable, and fiber optic cable. Upon request, **SBC-13STATE** shall permit CLEC to construct its own connection between CLEC's equipment and that of one or more collocating carriers, if CLEC does not request **SBC-13STATE**'s construction of such facilities. **SBC-13STATE** shall permit CLEC to construct such facilities using copper, coaxial or optical fiber equipment.
- 4.5 Within a contiguous area within the Eligible Structure, **SBC-13STATE** shall permit CLEC to connect its equipment with that of another collocated telecommunications carriers within the same Eligible Structure provided that the collocated equipment is also used for interconnection with **SBC-13STATE** or for access to **SBC-13STATE**'s unbundled network elements.
- 4.5.1 CLEC will not be permitted to place cable over **SBC-13STATE**'s switches or other critical equipment. **SBC-13STATE** will designate the route and space to be used for such facilities. **SBC-13STATE** shall permit CLEC to construct such facilities using copper or optical fiber facilities subject to the same reasonable safety requirements that **SBC-13STATE** imposes on its own equipment and facilities, without requiring the Collocator to purchase any equipment or connecting facilities solely from **SBC-13STATE**.
- 4.6 If the Collocators are not located on the same floor and cannot physically pull the cable themselves through the **SBC-13STATE** provided structure(s), **SBC-13STATE** will perform the necessary construction and perform the cable pull on a time and materials basis. At no time will CLEC be allowed access to any portion of the central office other than the collocation area — except for reasonable access to restrooms and parking lots where available. **SBC-13STATE** will not make the physical connection with CLEC's equipment, **SBC-13STATE** will not accept any liability for the cable or the connections and **SBC-13STATE** will not maintain any records concerning these connections.
- 4.7 **SBC-13STATE** shall permit CLEC to place its own connecting transmission facilities

within **SBC-13STATE**'s Eligible Structure in the physical collocation space, without requiring the Collocator to purchase any equipment or connecting facilities solely from **SBC-13STATE**, subject to reasonable safety limitations. CLEC shall not have access to **SBC-13STATE**'s Main Distribution Frame and/or Intermediate Distribution Frame. As provided herein, **SBC-13STATE** may require reasonable security arrangements to protect its equipment and ensure network reliability. Except as provided below, **SBC-13STATE** may only impose security arrangements that are as stringent as the security arrangements that **SBC-13STATE** maintains at its own premises for its own employees or authorized contractors. **SBC-13STATE** must allow CLEC to access its installed physical collocation equipment 24 hours a day, seven days a week, in **SBC-13STATE** Eligible Structures without requiring either a security escort of any kind or delaying a CLEC's employees' entry into **SBC-13STATE**'s Eligible Structure. Reasonable security measures that **SBC-13STATE** may adopt include, but are not limited to, the following:

- 4.7.1 Installing security cameras or other monitoring systems; or
 - 4.7.2 Requiring CLEC personnel to use badges with computerized tracking systems; or
 - 4.7.3 Requiring CLEC employees to undergo the same level of security training, or its equivalent, that **SBC-13STATE**'s own employees, or third party contractors providing similar functions, must undergo; provided, however, that **SBC-13STATE** may not require CLEC employees to receive such training from **SBC-13STATE** itself, but must provide information to CLEC on the specific type of training required so CLEC's employees can conduct their own training.
 - 4.7.4 **SBC-13STATE** may take reasonable steps to protect its own equipment, such as enclosing the equipment in a cage.
- 4.8 **Relocation** – In the event **SBC-13STATE** determines it necessary for Dedicated Collocation Space to be moved within the Eligible Structure in which the Dedicated Collocation Space is located or to another Eligible Structure, CLEC is required to do so. If such relocation arises from circumstances beyond the reasonable control of **SBC-13STATE**, including condemnation or government order or regulation that makes the continued occupancy of the dedicated collocation space or Eligible Structure too costly in **SBC-13STATE**'s sole judgment, CLEC shall be responsible for the cost of preparing the new dedicated collocation space at the new location. Otherwise **SBC-13STATE** shall be responsible for any reasonable preparation costs
- 4.8.1 In the event that CLEC requests that the Dedicated Collocation Space be moved within the **SBC-13STATE** Eligible Structure or to another Eligible

Structure, **SBC-13STATE** shall permit CLEC to relocate the Dedicated Collocation Space, subject to the availability of space and associated requirements. CLEC shall be responsible for all charges associated with the move, including the reinstallation of its equipment and facilities and the preparation of the new Dedicated Collocation Space and the new Wire Center as applicable.

- 4.9 CLECs will conduct background checks of their personnel and technicians who will have access to the Collocation Area. CLEC technicians will be security qualified by the CLEC and will be required to be knowledgeable of **SBC-13STATE**'s security standards. CLEC personnel and technicians will undergo the same level of security training, or its equivalent, that **SBC-13STATE**'s own employees and authorized contractors must undergo. **SBC-13STATE** will not, however, require CLECs to receive security training from **SBC-13STATE**. CLECs can then provide their employees with their own security training. Qualification program and security training details shall be included in **SBC-13STATE**'s technical publications and/or Collocation website(s).
- 4.10 CLECs and **SBC-13STATE** will each establish disciplinary procedures up to and including dismissal or denial of access to the Eligible Structure and other **SBC-13STATE**'s property for certain specified actions that damage, or place the equipment, facilities, or the network or personnel of the CLECs or **SBC-13STATE** in jeopardy. The following are actions that could damage or place the Eligible Structure, or the network or the personnel of the CLECs or **SBC-13STATE**, in jeopardy and may justify disciplinary action up to and including dismissal or the denial of access to the Eligible Structure and other **SBC-13STATE** property:
- 4.10.1 Theft or destruction of **SBC-13STATE**'s or any CLEC's property.
- 4.10.2 Use or attempted use/sale of alcohol or illegal drugs on **SBC-13STATE**'s property.
- 4.10.3 Industrial espionage.
- 4.10.4 Threats or violent acts against other persons on **SBC-13STATE**'s property.
- 4.10.5 Knowing violations of any local, state or federal law on **SBC-13STATE**'s property.
- 4.10.6 Permitting unauthorized persons access to **SBC-13STATE**'s or CLEC's equipment on **SBC-13STATE**'s property.

- 4.10.7 Carrying a weapon on **SBC-13STATE**'s property.
- 4.11 In addition, the CLEC and **SBC-13STATE** will take appropriate disciplinary steps as determined by each party to address any violations reported by **SBC-13STATE** or the CLEC of **SBC-13STATE**'s policies and practices on security, safety, network reliability, and business conduct as defined in **SBC-13STATE**'s Interconnector's Collocation Services Handbook and/or Collocation website(s), provided the such information and any and all updates to it are timely provided to the CLEC.
- 4.12 CLECs will provide indemnification and insurance as set forth in this agreement to cover any damages caused by the CLEC's technicians at a level commensurate with the indemnification and insurance provided by **SBC-13STATE**'s authorized contractors with equivalent access. The indemnification provisions and requirements are reciprocal to **SBC-13STATE** as well.
- 4.13 **SBC-13STATE** may use reasonable security measures to protect its equipment, including, but not limited to, enclosing its equipment in its own cage, the use of security cameras or other monitoring devices, badges with computerized tracking systems, identification swipe cards, keyed access, and/or logs, as appropriate for the Eligible Structures where physical collocation will take place. **SBC-13STATE**'s enclosure of its own equipment will not be a basis for a claim that space is exhausted.

5. SPACE AVAILABILITY

- 5.1 At the request of CLEC, **SBC-13STATE** will provide space for physical collocation as described above. **SBC-13STATE** is not required to provide physical collocation at a particular Eligible Structure if it demonstrates that physical collocation is not practical for technical reasons or because of space limitations. In such cases and with the qualifications set forth above, **SBC-13STATE** will provide Adjacent Structure Collocation as described above or Virtual Collocation, except at points where **SBC-13STATE** proves that Adjacent Structure Collocation and/or Virtual Collocation is not technically feasible. If Adjacent Structure Collocation or Virtual Collocation is not technically feasible, **SBC-13STATE** will make a good faith effort to negotiate other methods of interconnection and access to unbundled network elements to the extent technically feasible.
- 5.2 The determination whether there is sufficient space to accommodate physical collocation at a particular Eligible Structure will be made initially by **SBC-13STATE**. **SBC-13STATE** will notify CLEC within ten (10) business days of submission of a completed Application for physical collocation by CLEC as to whether its request for space is been granted or denied due to a lack of space.

- 5.2.1 When space for physical collocation in a particular Eligible Structure is not available, **SBC-13STATE** shall place CLEC on the waiting list for collocation in a particular Eligible Structure according to the date CLEC submitted its application for physical collocation in that Eligible Structure
- 5.2.2***In **PACIFIC/NEVADA**, any nonrecurring charges collected with the application, except the application fee will be returned to the CLEC. **PACIFIC/NEVADA** will, at the same time, forward a copy of the letter denying the CLEC's request to the California or Nevada Commission.
- 5.3 If **SBC-13STATE** contends space for physical collocation is not available in a premises, **SBC-13STATE** must allow CLEC to tour the entire central office or other Eligible Structure in question, not just the area in which space was denied, without charge, within ten business days, or such later date as mutually agreed, of the receipt of **SBC-13STATE**'s denial of space. Prior to taking a tour, each representative must execute and deliver to **SBC-13STATE** a standard nondisclosure agreement. In no event shall any camera or other video/audio-recording device be brought on or utilized during any tour of an **SBC-13STATE**'s Premises.
- 5.3.1 If CLEC disputes **SBC-MOKA**'s determination, CLEC can elect a review to be made by a mutually agreed to third party engineer, under a non-disclosure agreement. All costs of the third-party inspection, including but not limited to all payments to the third-party engineer in connection with the inspection, shall be shared equally by **SBC-MOKA** and CLEC. The engineer shall take into consideration **SBC-MOKA**'s planned use for the Eligible Structure under review.
- 5.3.2* In the event of a denial, **PACIFIC** will concurrently submit to both the California Commission and the CLEC, in support of its denial, provided under seal and subject to proprietary protections: Central office common language identifier, where applicable, the identity of the requesting CLEC, including amount of space requested by the CLEC, the total amount of space at the Dedicated Space, floor plans documented as provided for in the Interconnector's Collocation Services Handbook, identification of switch turnaround plans and other equipment removal plans and timelines, if any, central office rearrangement/expansion plans, if any, and description of other plans, if any that may relieve space exhaustion.

*** Available only in the State of California and Nevada. Refer to INTERCONNECTION AGREEMENT: GENERAL TERMS AND CONDITIONS Paragraph 2.10.1.

5.3.3* In the event **PACIFIC** denies a CLEC's request and the CLEC disputes the denial the CLEC may request a tour of the entire Eligible Structure to verify space availability or the lack thereof. The request shall be submitted to **PACIFIC** designated representative in writing. The inspection tour shall be scheduled within five (5) business days of receipt of the request for a tour and the tour shall be conducted within ten (10) days of the denial of space or at some mutually acceptable time if greater than (10) days

5.3.3.1* Prior to the inspection tour, a "Reciprocal Non-disclosure Agreement" shall be signed by the **PACIFIC** representative and the designated agent for the CLEC, who will participate in the tour.

5.3.3.2* **PACIFIC** will provide all relevant documentation to the CLEC agent including floor plans and plans for future facility expansions or enhancements, subject to executing the non-disclosure agreement. The **PACIFIC** representative will accompany and supervise the CLEC agent on the inspection tour.

5.3.3.3* If the CLEC agent believes, based on the inspection tour of the Eligible Structure facilities, that the denial of collocation space is insupportable, the CLEC and **PACIFIC** shall then each concurrently prepare a report detailing its own findings of the inspection tour. The CLEC and the **PACIFIC** reports shall be on concurrently served on each other and submitted to the California Public Utility's Commission no later than 45 days following the filing of the request for space. Burden of proof shall be on **PACIFIC** to justify the basis for any denial of collocation space requests.

5.3.4 If **SBC-MOKA/NEVADA/SNET/SBC-AMERITECH** denies CLEC's Physical Collocation request because of space limitations and, after touring the applicable Premises, the Parties are unable to resolve the issue of whether the denial of space was proper, **SBC-MOKA/NEVADA/SNET/SBC-AMERITECH** shall, in connection with any complaint filed by CLEC, file with the Commission detailed floor plans or diagrams of such Premises, subject to protective order.

5.3.4.1 * Within ten (10) days of CLEC submitting a request to **PACIFIC** for

* Available only in the State of California. Refer to INTERCONNECTION AGREEMENT: GENERAL TERMS AND CONDITIONS Paragraph 2.10.1.

physical collocation, if **PACIFIC** finds that it must deny the request, **PACIFIC** must file its response, under seal, with the Commission. The response includes the following information:

- 5.3.4.2* Central Office Common Language Identifier, where applicable;
- 5.3.4.3* The identity of the requesting CLEC, including amount of space sought by CLEC;
- 5.3.4.4* Total amount of space at the premises;
- 5.3.4.5* Floor plans including measurements of the **PACIFIC** premises, showing:
 - 5.3.4.5.1* Space housing **PACIFIC** network equipment or administrative offices;
 - 5.3.4.5.2* Space housing unused obsolete equipment, if any;
 - 5.3.4.5.3* Space which does not currently house **PACIFIC** equipment or administrative offices but is reserved by **PACIFIC** for future use;
 - 5.3.4.5.4* Space occupied by Collocators for the purpose of network interconnection or access to unbundled network elements;
 - 5.3.4.5.5* Space, if any, occupied by third parties for other purposes;
 - 5.3.4.5.6* Remaining space, if any.
 - 5.3.4.5.7* Identification of turnaround space for the switch or other equipment, if any;
 - 5.3.4.5.8* Central office rearrangement/expansion plans, if any and
 - 5.3.4.5.9* Description of other plans, if any, that may relieve space exhaustion.

- 5.4 **SBC-13STATE** will maintain a publicly available document, posted for viewing on **SBC-13STATE**'s Internet site(s), indicating all premises that are full, and will update

such a document within ten days of the date at which a premises runs out of physical collocation space.

- 5.5 Upon request, **SBC-13STATE** must submit to the requesting carrier within ten days of the submission of the request a report indicating the available collocation space in a particular **SBC-13STATE** Eligible Structure. This report will specify the amount of collocation space available at each requested Dedicated Space, the number of Collocators, and any modifications in the use of the space since the last report. This report will also include measures that **SBC-13STATE** is taking to make additional space available for collocation. **SBC-13STATE** will provide a report for 1 to 5 requests in 10 business days and 6 to 20 requests in 25 business days. Should the CLEC submit more than 20 requests at once for central offices where there is no current collocation or collocation forecasted, **SBC-13STATE** will provide the information on a scheduled basis of ten additional offices every ten days.

5.5.1 In **SBC-13STATE**, Reports shall be ordered via the Collocation order form and shall specifically identify the CLLI code of each Premises for which a report is ordered.

- 5.6 In any Central Office in which all options for physical collocation offered by **SBC-13STATE** have been exhausted, **SBC-13STATE** shall not be permitted to provide additional space in that Central Office for any of its affiliates

- 5.7 **SBC-13STATE** is not required to lease or construct additional space to provide for physical collocation when existing space has been exhausted. Moreover, **SBC-13STATE** is not required to, nor shall this Appendix create any obligation or expectation, to relinquish used, or forecasted space to undertake the construction of new quarters or to construct additions to existing quarters in order to satisfy any request for additional space or the placement of CLEC equipment or facilities, whether through an initial request for physical collocation or a

subsequent request for more space in an Eligible Structure. **SBC-13STATE** and CLEC shall not unreasonably warehouse forecasted space.

- 5.8 To the extent possible, **SBC-13STATE** will make contiguous space available to CLEC if CLEC seeks to expand an existing physical collocation arrangement and such request meets **SBC-13STATE**'s non-discriminatory practices regarding efficient space utilization.

- 5.9 When planning renovations of existing Eligible Structures or constructing or leasing new Eligible Structures, **SBC-13STATE** will take into account future demand based upon its knowledge of CLEC demand for Collocation. CLEC will provide **SBC-13STATE**

with a two (2)-year rolling forecast of its requirements for Collocation that will be reviewed jointly on a yearly basis by the Parties.

- 5.10 **SBC-13STATE** may retain a limited amount of floor space for **SBC-13STATE**'s own specific future uses for a time period on terms no more favorable to **SBC-13STATE** for like equipment than those that apply to other telecommunications carriers, including CLEC, seeking to reserve Collocation space for their own future use. Except for space needed for switching equipment "turnaround" (e.g., the installation of new switching equipment to replace then-existing switching equipment), other telecommunications equipment and infrastructure, if any, and/or otherwise permitted or directed by applicable rule or order, **SBC-13STATE** will relinquish any space held for future use before denying a request for Virtual Collocation on grounds of space limitations, unless **SBC-13STATE** proves to the Commission that Virtual Collocation at that point is not technically feasible, including that space does not exist. In any such event, **SBC-13STATE** and CLEC will attempt to reach a mutually agreeable alternative method of interconnection.
- 5.11. At the request of the Commission or CLEC, **SBC-13STATE** shall remove any obsolete and unused equipment (e.g., retired in-place") from its Premises. **SBC-13STATE** shall be permitted to recover the cost of removal and/or relocation of such equipment if **SBC-13STATE** incurs expenses that would not otherwise have been incurred (at the time of the request or subsequent thereto) except to increase the amount of space available for collocation (e.g., costs to expedite removal of equipment or store equipment for reuse).
- 5.12 **SBC-13STATE** may impose reasonable restrictions on its provision of additional unused space available for Collocation (so-called "warehousing") as described in paragraph 586 of the First Report and Order (96-325); provided, however, that **SBC-13STATE** shall not set a maximum space limitation on CLEC unless **SBC-13STATE** proves to the Commission that space constraints make such restrictions necessary

6. DENIAL OF COLLOCATION EQUIPMENT

- 6.1 All types of network equipment placed in **SBC-13STATE** network equipment areas of Eligible Structures by **SBC-13STATE** or CLECs must meet the **SBC-13STATE** minimum safety standards. The minimum safety standards are:
- 6.1.1 Equipment compliance to **SBC-13STATE** technical publication TP 76200MP Level 1 requirements, (see Texas Tariff section 5 paragraph 10.1 for Texas specific Tariff requirements for this standard), or

6.1.2 Equipment history of safe operation demonstrated by placement in an ILEC network premise prior to January 1, 1998 with no documented or known history of safety problems.

6.2 **SBC-13STATE** is not required to permit collocation of equipment that is not necessary for either access to UNEs or for interconnection with **SBC-13STATE**, nor such as equipment used exclusively for switching or for enhanced services. Nothing in this Agreement requires **SBC-13STATE** to permit collocation of equipment used solely for switching or solely to provide enhanced services; provided, however, that **SBC-13STATE** may not place any limitations on the ability of CLEC to use all the features, functions, and capabilities of equipment collocated, including, but not limited to, switching and routing features and functions and enhanced services functionalities.

7. DEDICATED COLLOCATION SPACE CHARGES

7.1 Dedicated Collocation Space

7.1.1 **SBC-MOKA/SNET**: For each Eligible Structure in which CLEC desires to physically collocate equipment, CLEC must submit a Physical Collocation Application with the applicable Engineering Design Charge and/or application fee. A copy of the Physical Collocation Application may be obtained from the **SBC-MOKA/SNET** Collocation Services account manager. The Physical Collocation Application must also be used for each subsequent request to place equipment in an Eligible Structure.

7.1.2 In **SBC-AMERITECH** the installation interval begins after CLEC has submitted a complete order and rendered the associated initial COBO payment (denotes the firm order) as required in conjunction with the appropriate Notification Interval as in 2.6.

7.1.3 The installation interval begins after CLEC has submitted a complete application, with appropriate fees and prepayment as defined in **NEVADA**'s tariff, and NEVADA has completed processing of the application **NEVADA** agrees to pursue diligently the preparation of the Dedicated Space for use by CLEC

7.1.3.1 **NEVADA** shall provide information to CLEC at the "Initial Contact," not incorporated herein but as described in the Interconnector's Collocation Services Handbook 6.3.

7.1.3.2 **NEVADA** and CLEC shall conduct two operational meetings prior to turnover of the dedicated space.

- 7.1.4* The installation interval begins after CLEC has submitted a complete application, with appropriate fees and prepayment as defined in **PACIFIC**'s tariff, and **PACIFIC** has completed processing of the application. **PACIFIC** agrees to pursue diligently the preparation of the Dedicated Space for use by CLEC.
- 7.1.4.1* **PACIFIC** shall provide information to CLEC at the "Initial Contact," not incorporated herein but as described in the Interconnector's Collocation Services Handbook.
- 7.1.4.2* **PACIFIC** and CLEC shall conduct two operational meetings prior to turnover of the dedicated space.
- 7.2 **SBC-13STATE** will contract for and perform the construction and preparation activities necessary to prepare the dedicated space, Dedicated Space using the same or consistent practices that are used by **SBC-13STATE** for other construction and preparation work performed in the Eligible Structure.
- 7.2.1 Notwithstanding the above, **SBC-13STATE** will permit CLEC to subcontract the construction of Physical Collocation arrangements with contractors approved by **SBC-13STATE**, provided that **SBC-13STATE** will not unreasonably withhold approval of contractors.
- 7.2.1.1 Certification by **SBC-8STATE** will be based on the same criteria **SBC-8STATE** uses in certifying contractors for its own purposes.
- 7.3 **Recurring/Non-Recurring charges** - CLEC shall pay **PACIFIC/SWBT-TX/SNET/SBC-AMERITECH** a per month charge and non-recurring charges for use of the Dedicated Collocation Space and any Telco provided equipment/facilities therein. These charges are contained in the state specific Appendix Pricing and/or in the applicable tariff. The recurring monthly charges for each Dedicated Collocation Space shall stay fixed for the term of this agreement and may be modified upon renegotiation of the Interconnection Agreement.
- 7.3.1 An ICB quote is prepared by **SBC-MOKA/NEVADA** to estimate non-recurring and recurring charges associated with the requested collocation space. This ICB quote is prepared specifically for collocation requests and is not

* Available only in the State of California. Refer to INTERCONNECTION AGREEMENT: GENERAL TERMS AND CONDITIONS Paragraph 2.10.1.

associated in any way with the Bona Fide Request (BFR) process used to request UNEs or other unique items not contained in a CLEC Interconnection Agreement.

- 7.4 CLEC shall pay its proportionate share of any reasonable security arrangements **SBC-13STATE** employs to protect **SBC-13STATE** equipment and ensure network reliability.
- 7.5 Payment of Preparation Charge - Prior to any obligation on **SBC-8STATE** to start any preparation of the Dedicated collocation space, CLEC shall pay **SBC-8STATE** fifty percent (50%) of the Preparation Charge and eighty-five percent (85%) of any custom work charge required to create or vacate any entrance facility for the CLEC ("Custom Work"). CLEC also has the option of submitting a surety bond to cover these charges, in lieu of a check. The remainder of the Preparation Charge and any Custom Work charge are due upon completion and prior to occupancy by the CLEC.
- 7.5.1 **SBC-AMERITECH** requires, before any obligation by **SBC-AMERITECH** to begin any preparation work associated with the Dedicated Collocation Space that CLEC shall pay **SBC-AMERITECH** fifty percent (50%) of the COBO charge in states where the COBO is a non-recurring charge. Twenty-five percent (25%) of the COBO charge is due at the midpoint of the preparation of the Dedicated Collocation Space with the remaining twenty-five percent (25%) of the COBO charge due upon completion of the Dedicated Collocation Space. Any extraordinary expenses, if applicable, must be agreed to by the CLEC prior to actual commencement of the physical construction of the Dedicated Collocation Space.
- 7.6 Occupancy Conditioned on Payment - **SBC-13STATE** shall not permit CLEC to have access to the dedicated collocation space for any purpose other than inspection during construction of CLEC's dedicated physical collocation space until **SBC-13STATE** is in receipt of complete payment of the Preparation Charge and any Custom Work charges and/or applicable COBO.
- 7.7 Breach Prior to Commencement Date - In the event that the CLEC materially breaches this Agreement by purporting to terminate this Agreement after **SBC-13STATE** has begun preparation of the dedicated collocation space but before **SBC-13STATE** has been paid the entire amounts due under this Article, then in addition to any other remedies that **SBC-13STATE** might have, the CLEC shall be liable in the amount equal to the non-recoverable costs less estimated net salvage. Non-recoverable costs include the non-recoverable cost of equipment and material ordered, provided or used; the non-recoverable cost of installation and removal, including the costs of equipment and material ordered, provided or used; labor; transportation and any other associated

costs.

- 7.8 **Late Payment Charge** - In the event that any charge is not paid when due, the unpaid amounts shall bear interest in accordance with the terms and conditions set forth in **SBC-13STATE**'s intrastate tariff late payment provision(s) applicable to access services for the State in which the dedicated collocation space is located, or the highest rate permitted by law, whichever is lower, from the due date until paid.
- 7.9 **Charges will begin to accrue on the Effective Billing Date** - The Effective Billing Date is the date **SBC-13STATE** made the Dedicated Collocation Space available to CLEC
- 7.9.1*** **PACIFIC/NEVADA**: The charges for a Physical Collocation arrangement in an Eligible Structure where interstate expanded interconnection is required to be provided pursuant to 47 C.F.R. [two section symbols] 64.1401(a), 64.1401(b) shall be as set forth in the applicable Tariff(s). To the extent that any of those charges are subject to appeal, the result of any such appeal shall be retroactively applied to any Physical Collocation arrangement ordered or provided under any such charge. To the extent that rates are not provided in the applicable Tariff(s), rates shall be determined on Individual Case Basis "ICB." Any ICB quote shall be included as part of the quote provided to the CLEC in response to its Physical Collocation application
- 7.10 The monthly recurring charge(s) shall begin to apply within, but no later than 30 days from the date that **SBC-13STATE** has turned over the dedicated space to the CLEC, Dedicated Space regardless of any failure by CLECs to complete its work. The fact that **SBC-13STATE** may have additional work to perform after CLEC does complete its work shall not bar the start of such charges.
- 7.11 The charges for a Adjacent Structure Collocation and for a Physical Collocation arrangement that is provided in Eligible Structures other than Central Offices shall be determined on Individual Case Basis (ICB/NSCR) in the **SBC-13STATEs**.
- 7.12 Restroom access and parking will be provided on a reasonable basis in the **SBC-13STATEs**.
- 7.13 **NEVADA**: In the event that any CLEC Telecom Equipment that is to be placed in the Premises was not contemplated by that interstate tariff (which was based upon the requirements of 47 C.F.R. § 64.1401), CLEC may be subject to charges under an ICB

*** Available only in the State of California and Nevada. Refer to INTERCONNECTION AGREEMENT: GENERAL TERMS AND CONDITIONS Paragraph 2.10.1.

if **NEVADA**'s costs of providing the necessary Premises requirements (e.g., space, power, environmental, grounding) for any such CLEC Telecom Equipment is not recovered by those tariffed rates. Any ICB quote shall be included as part of the quote provided to the CLEC in response to its Physical Collocation application.

- 7.14*** CLEC and **PACIFIC/NEVADA** will complete an acceptance walk-through of the Dedicated Space prior to turning the Dedicated Space over to CLEC. Exceptions that are noted during this acceptance walk-through shall be corrected by **PACIFIC/NEVADA** as soon as commercially reasonable after those exceptions are provided in writing, which exceptions shall be provided no more than 5 business days after the walk through. The correction of these exceptions from CLEC's Physical Collocation request shall be at **PACIFIC/NEVADA**'s expense.
- 7.15 **SBC-13STATE** shall ensure that the Dedicated Space and the Eligible Structure comply with all applicable fire and safety codes. The preparation shall be arranged by **SBC-13STATE** in compliance with all applicable codes, ordinances, resolutions, regulations and laws.

8. USE OF DEDICATED COLLOCATION SPACE

- 8.1 Nature of Use – The dedicated collocation space is to be used by CLEC for purposes of collocating equipment and facilities within **SBC-13STATE**'s Eligible Structure for interconnection with **SBC-13STATE**'s network, pursuant to 47 U.S.C. 251(c)(2), and for obtaining access to **SBC-13STATE**'s unbundled network elements, pursuant to 47 U.S.C. 251 (c)(3). Consistent with the nature of the Eligible Structure and the environment of the dedicated collocation space, CLEC shall not use the dedicated collocation space for office, retail, or sales purposes. No signage or markings of any kind by CLEC shall be permitted on the Eligible Structure or on the grounds surrounding the Building.
- 8.2 CLEC shall not have access to **SBC-13STATE**'s Main Distribution Frame or Intermediate Distribution Frame, DSXs, DCS, or any other **SBC-13STATE** equipment or facilities not specifically designated by **SBC-13STATE** for CLEC access.
- 8.3 A list of all of CLEC Telecom Equipment that will be placed within the Dedicated Space shall be set forth on the CLEC's Physical Collocation application, which includes associated power requirements, floor loading, and heat release of each piece of CLEC Telecom Equipment. CLEC warrants and represents that the Physical Collocation application contains a complete and accurate list of such CLEC Telecom Equipment.

*** Available only in the State of California and Nevada. Refer to INTERCONNECTION AGREEMENT: GENERAL TERMS AND CONDITIONS Paragraph 2.10.1.

CLEC shall not place or leave any other equipment or facilities within the Dedicated Space without the express written consent of **SBC-13STATE**.

- 8.4 In the event that subsequent to the submission of the Physical Collocation application and its list of CLEC Telecom Equipment with the required technical information, CLEC desires to place in the Dedicated Space any telecommunications equipment or such ancillary telecommunications facilities not so set forth in the Physical Collocation application, CLEC shall furnish to **SBC-13STATE** a new Physical Collocation application and any Applicable charges to cover such equipment or facilities. Thereafter, consistent with its obligations under the Act and applicable FCC and Commission rules, orders, and awards, **SBC-13STATE** may provide such written consent or may condition any such consent on additional charges arising from the request, including any applicable fees and any additional requirements such as power and environmental requirements for such requested telecommunications equipment and/or facilities. Upon the execution by both **SBC-13STATE** and CLEC of a final list and description and receipt by **SBC-13STATE** of payment of any applicable non-recurring charges, the Physical Collocation arrangement shall be deemed to have been amended and such requested telecommunications equipment and/or facilities shall be included within "CLEC Telecom Equipment."
- 8.5 CLEC may use the Dedicated Space for placement of CLEC telecommunications equipment that is necessary ("used or useful") for interconnection or access to UNE's. CLEC's employees, agents and contractors shall be permitted access to the Dedicated Space at all times, provided that CLEC's employees, agents and contractors comply with **SBC-13STATE**'s policies and practices pertaining to fire, safety and security. CLEC agrees to comply promptly with all laws, ordinances and regulations affecting the use of the Dedicated Space.
- 8.6 CLEC Telecom Equipment, CLEC operating practices, or other activities or conditions attributable to CLEC that represent a demonstrable threat to **SBC-13STATE**'s network, equipment, or facilities, including the Eligible Structure, or to the network, equipment, or facilities of any person or entity located in the Eligible Structure, are strictly prohibited.
- 8.7 Operation of any equipment, facilities or any other item placed in the Dedicated Space shall not interfere with or impair service over **SBC-13STATE**'s network, equipment, or facilities, or the network, equipment, or facilities of any other person or entity located in the Eligible Structure; create hazards for or cause damage to those networks, equipment, or facilities, the Dedicated Space, or the Eligible Structure; impair the privacy of any communications carried in, from, or through the network, equipment, facilities the Dedicated Space or the Eligible Structure; or create hazards or cause

physical harm to any person, entity, or the public. Any of the foregoing events would be a material breach of this Appendix.

- 8.8 Subject to the limitations and restrictions of this Appendix, CLEC may place or install in or on the Dedicated Space such fixtures and unpowered facilities as it shall deem desirable for the proper use of the Dedicated Space as described above, in **SBC-13STATE**s. Personal property, fixtures and unpowered facilities placed by CLEC in the Dedicated Space shall not become a part of the Dedicated Space, even if nailed, screwed or otherwise fastened to the Dedicated Space, but shall retain their status as personal property and may be removed by CLEC at any time. Any damage caused to the Dedicated Space by the removal of such property shall be repaired at CLEC's expense.
- 8.9 In no case shall CLEC or any person or entity purporting to be acting through or on behalf of CLEC make any significant rearrangement, modification, improvement, addition, repair, or other alteration to the Dedicated Space or the Eligible Structure without the advance written permission and direction of **SBC-13STATE**. **SBC-13STATE** shall consider a modification, improvement, addition, repair, or other alteration requested by CLEC, provided that **SBC-13STATE** shall have the right to reject or modify any such request. **SBC-13STATE** will perform any such construction, and the associated cost shall be paid by CLEC in accordance with **SBC-13STATE**'s then-standard custom work order process or NSCR.
- 8.10 This Appendix and the Collocation provided hereunder is made available subject to and in accordance with Sections 8.10.1, 8.10.2, 8.10.3, 8.10.4, and 8.10.5. CLEC shall strictly observe and abide by each in **SBC-13STATE**'s.
- 8.10.1 SBC Local Exchange Carriers TP 76200MP, Network Equipment: Power, Grounding, Environmental, and Physical Design Requirements, and any successor document(s), including as such may be modified at any time and from time to time;
- 8.10.2 **SBC-13STATE**'s most current Interconnector's Collocation Services Handbook and any successor document(s), as may be modified from time to time as set forth below.
- 8.10.3 TP 76300MP, SBC Local Exchange Carriers Installation Requirements, and any successor documents should be followed in installing network equipment, and facilities within **SBC-13STATE** central offices and may be modified from time to time.

- 8.10.4 Any statutory and/or regulatory requirements in effect at the time of the submission of the Physical Collocation application or that subsequently become effective and then when effective.
- 8.10.5 The Interconnector's Collocation Services Handbook, TP 76300MP and the TP 76200MP Standards are not incorporated herein but are available on the appropriate SBC ILEC's Collocation Internet site.
- 8.11 If the Interconnector's Collocation Services Handbook, Collocation website(s) or the TP 76300MP, is modified subsequent to the effective date of this agreement from the attached, the following shall apply:
- 8.11.1 If a modification is made after the date on which CLEC has or orders a Physical Collocation arrangement, **SBC-13STATE** shall provide CLEC with those modifications or with revised versions of such, listing or noting the modifications as appropriate. Any such modification shall become effective and thereafter applicable under this Agreement thirty (30) days after such amendment is released by **SBC-13STATE**, except for those specific amendments to which CLEC objects to within thirty (30) days of receipt, providing therewith an explanation for each such objection. The Parties shall pursue such objections informally with each other and, if not resolved within forty-five (45) days, either Party will have fourteen (14) days to invoke the dispute resolution procedures applicable to this Agreement. If neither Party invokes those procedures, the modification is deemed effective and applicable.
- 8.11.2 If a modification is made after this Appendix becomes part of an effective "Statement of Generally Available Terms and Conditions" or similar document for **SBC-13STATE** (and the modification has not been included in a change to that "Statement" or this Appendix), then **SBC-13STATE** will provide CLEC with a copy of such modifications or the most recent version or revision of the particular document promptly after receipt of CLEC's physical collocation application. Any CLEC objection to those modifications must be received by **SBC-13STATE** by the thirtieth (30th) day after their receipt by CLEC. Thereafter, the same process and procedure (including timelines) for resolving any objection made under Section 8.11.1 shall apply.
- 8.11.3 Notwithstanding Sections 8.11.1 and/or 8.11.2, any modification made to address situations potentially harmful to **SBC-13STATE**'s or another's network, equipment, or facilities, the Eligible Structure, the Dedicated Space, or to comply with statutory or regulatory requirements shall become effective immediately and shall not be subject to objection. **SBC-13STATE** will immediately notify CLEC of any such modification.

8.12 The terms and conditions expressly set forth in this Appendix shall control in the event of an irreconcilable conflict with the Collocation Services Handbook, Collocation website(s) and the TP 76300MP, or the TP76200MP (including any modification to any of them that can be objected to under this Section 8.11, regardless of whether CLEC objected to such modification) in the **SBC-13STATEs**. Notwithstanding the immediately preceding, modifications that are governed by Section 8.11.3 shall apply regardless of any conflict or inconsistency with any other term or condition governing a Physical Collocation arrangement unless contrary to law.

8.12.1 CLEC warrants and represents, for each item of the CLEC Telecom Equipment, that such equipment meets the **SBC-13STATE** minimum safety standards. The minimum safety standards are: (1) Equipment compliance to SBC LEC technical publication TP 76200MP Level One requirements and to corrosion protection requirements contained in Telcordia NEBS document GR-1089-CORE, Criteria [72, 73], except in the State of Texas where equipment compliance to Telcordia NEBS Level 1 requirements are the minimum safety requirements for CLEC equipment, or (2) Equipment history of safe operation demonstrated by placement as network equipment in an ILEC prior to January 1, 1998 with no documented or known history of safety problems. CLEC also warrants and represents that any other telecommunications equipment or ancillary telecommunications facilities that may be placed in the Dedicated Space as permitted hereunder or otherwise shall be so compliant. **SBC-13STATE** may not object to the collocation of equipment on the grounds that the equipment does not comply with safety or engineering standards that are more stringent than the safety or engineering standards that **SBC-13STATE** applies to its own equipment. **SBC-13STATE** may not deny collocation of Collocator equipment because the equipment fails to meet TP76200MP reliability standards. If **SBC-13STATE** denies collocation of CLEC equipment, citing non-compliance to the minimum safety standards, **SBC-13STATE** must provide to the CLEC within five business days of the denial a list of all network equipment that **SBC-13STATE** has placed within the network area(s) of the premises in question since January 1, 1998, together with an affidavit attesting that all of that equipment meets or exceeds the minimum safety standards. DISCLOSURE OF ANY NON-COMPLIANT EQUIPMENT OR FACILITIES TO **SBC-13STATE** IN A PHYSICAL COLLOCATION APPLICATION OR OTHERWISE SHALL NOT QUALIFY THIS ABSOLUTE CERTIFICATION REQUIREMENT IN ANY MANNER.

8.13 Unless otherwise expressly agreed in writing, **SBC-13STATE** will provide for all AC and DC power requirements in the Eligible Structure. The CLEC is not permitted to, and will not, place any AC or DC power-generating or power-storing devices

(including, for example but not limited to rectifiers, battery plants, AC or DC generators) in the Eligible Structure. Power will support CLEC Telecom Equipment at the specified DC and AC voltages. At a minimum, the Power and **SBC-13STATE**'s associated performance, availability, restoration, and other operational characteristics shall be at parity with that provided to **SBC-13STATE**'s substantially similar telecommunications equipment unless otherwise mutually agreed in writing. Loads specified by the CLEC represent the peak current that will be imposed on a power feeder at any voltage within the emergency operating limits of the equipment and any normal operating condition (i.e. not a short circuit or other malfunction). Even though circuit design is based on peak current, DC power plant design sizing by the **SBC-13STATE**'s is based on demand management. All necessary Power will be supplied on a timely basis. A physical collocation space will be considered timely delivered only if it is fully operational, including power, at the time it is turned over to CLEC.

- 8.14 Other than the security restrictions described herein, **SBC-13STATE** shall place no restriction on access to CLEC's central office Dedicated Space by CLEC's employees and designated agents. Such space shall be available to CLEC designated agents twenty-four (24) hours per day each day of the week. **SBC-13STATE** will not impose unreasonable security restrictions for the Eligible Structure, including the Dedicated Space.
- 8.15 Fiber Entrances – CLEC shall use a single mode dielectric fiber optic cable as a transmission medium to the dedicated collocation space. CLEC shall be permitted no more than two (2) entrance routes into the Building, if available.
- 8.16 Demarcation Point – **SBC-13STATE** shall designate the point(s) of termination within the Eligible Structure as the point(s) of physical demarcation between CLEC's network and **SBC-13STATE**'s network, with each being responsible for maintenance and other ownership obligations and responsibilities on its side of that demarcation point.

9. OPERATIONAL RESPONSIBILITIES

- 9.1 CLEC and **SBC-13STATE** are each responsible for providing to the other contact numbers for technical personnel who are readily accessible twenty-four (24) hours a day, seven (7) days a week.
- 9.2 CLEC and **SBC-13STATE** are each responsible for providing trouble report status or any network trouble of problems when requested by the other.
- 9.3 **SBC-13STATE** shall provide an interconnection point or points, physically accessible by both **SBC-13STATE** and CLEC (typically a **SBC-13STATE** manhole) at which a CLEC fiber optic cable can enter the Eligible Structure, provided that **SBC-13STATE**

will designate interconnection points as close as reasonably possible to the Eligible Structure. **SBC-13STATE** will provide at least two such interconnection points at each Eligible Structure where there are at least two entry points for **SBC-13STATE**'s cable facilities and at which space is available for new facilities in at least two of those entry points.

9.3.1 CLEC is responsible for bringing its fiber optic cable to an accessible point outside of the Eligible Structure designated by **SBC-8STATE**, and for leaving sufficient cable length in order for **SBC-8STATE** to fully extend such CLEC-provided cable to the Dedicated Space.

9.3.2 CLEC is responsible for bringing its fiber optic cable to an accessible point outside of the Eligible Structure designated by **SBC-AMERITECH**, and for leaving sufficient cable length in order for **SBC-AMERITECH** to extend such CLEC-provided cable to the cable vault.

9.4 Regeneration of either DS-1 or DS-3 signal levels may be provided by CLEC or **SBC-13STATE** under its then-standard custom work order process or NSCR, including payment requirements prior to the installation of the regeneration equipment.

9.5 If CLEC fails to remove its equipment and facilities from the Dedicated Space within thirty (30) days after discontinuance of use, **SBC-13STATE** may perform the removal and shall charge CLEC for any materials used in any such removal, and the time spent on such removal at the then-applicable hourly rate for custom work. Further, in addition to the other provisions herein, CLEC shall indemnify and hold **SBC-13STATE** harmless from any and all claims, expenses, fees, or other costs associated with any such removal by **SBC-13STATE**.

9.6 CLEC is solely responsible for the design, engineering, testing, performance, and maintenance of the CLEC Telecom Equipment used by CLEC in the Dedicated Space.

CLEC may not disassemble, remove or otherwise reconfigure the cage enclosure (Dedicated Space) at any time unless it has been provided by the CLEC. CLEC is also responsible for servicing, supplying, repairing, installing and maintaining the following facilities within the Dedicated Space in the **SBC-13STATE**s:

9.6.1 Its fiber optic cable(s);

9.6.2 Its CLEC Telecom Equipment;

9.6.3 Optional point of termination cross connects in its dedicated collocation space or the optional POT Frame/cabinet located in the collocation common area except if on **SBC-8STATE**'s equipment.

- 9.6.4 CLEC requested dedicated point of termination frame maintenance, including replacement of fuses and circuit breaker restoration, to the extent that such fuses and circuit breakers are within CLEC's dedicated collocation space or in the optional POT frame located in the collocation common area if and as required; and
- 9.6.5 The connection cable and associated equipment which may be required within CLEC's dedicated collocation space or in the optional POT frame/cabinet located in the collocation common area to the point(s) of termination of that cable within CLEC's dedicated space.
- 9.6.6 Any power cables required beyond the **SBC-8STATE** provided Collocation Interconnection Power Panel (CIPP) to CLEC's equipment. **SBC-8STATE** must always engineer, furnish and install the Collocation Interconnect Power Panel (CIPP) within CLEC-provided equipment bay, the associated power cables to the CIPP from the **SBC-8STATE** provided power distribution source and terminate and test the power cables. The CIPP will be placed within CLEC-provided equipment bay in a location within the bay as designated by CLEC.

SBC-13STATE NEITHER ACCEPTS NOR ASSUMES ANY RESPONSIBILITY WHATSOEVER IN ANY OF THESE AREAS.

- 9.7 **SBC-13STATE** will allow CLEC to select its own contractors for all required engineering and installation services associated with the CLEC Telecom Equipment (*e.g.*, **SBC-13STATE** shall not require CLEC to use **SBC-13STATE**'s internal engineering or installation work forces for the engineering and installation of the CLEC Telecom Equipment). Installation of the CLEC Telecom Equipment in the Dedicated Space must nevertheless comply with TP76300MP.. CLEC-selected contractors must agree to all policies and procedures in this appendix. Access to the Eligible Structure and the Dedicated Space for CLEC contractors must meet the same requirements as the CLEC.
- 9.7.1 In **SBC- 8STATE**, CLEC contractors must be certified as required in the Interconnector's Collocation Handbook which is not incorporated herein but available on appropriate ILEC's website.
- 9.8 In **SBC-8STATE**, each Party is responsible for immediate verbal notification to the other of significant outages or operations problems which could impact or degrade that other's network, equipment, facilities, or services, and for providing an estimated

clearing time for restoration. In addition, written notification must be provided within twenty-four (24) hours.

- 9.9 CLEC is responsible for coordinating with **SBC-13STATE** to ensure that services are installed in accordance with a service request.
- 9.10 CLEC is responsible for testing, isolating and clearing trouble when the trouble has been isolated to inside the Dedicated Space, or to any piece of CLEC Telecom Equipment, or any other CLEC-provided facility or piece of equipment. If **SBC-13STATE** testing is also required, it will be provided at applicable charges.

10. VIRTUAL COLLOCATION

- 10.1 Upon request, **SBC-13STATE** shall provide CLEC Virtual Collocation in any Unused Space. If CLEC wishes to Virtually Collocate a bay other than a Standard Bay, it must request such Virtual Collocation via an ICB/NSCR. CLEC shall not have physical access to its Virtually Collocated equipment but may, at its expense, electronically monitor and control its Virtually Collocated equipment. **SBC-13STATE** shall, subject to CLEC's payment of the applicable rates, fees and charges, be responsible for installing, maintaining and repairing CLEC's equipment. CLEC cannot convert its Virtually Collocated equipment "in-place" to a method of Physical Collocation available herein (e.g., no "in-place" conversion of Virtual Collocation to Cageless Physical Collocation). In addition to the rates set forth in the Pricing appendix and applicable tariffs, if **SBC-13STATE** must locate CLEC's Virtual Collocation bays in its switch line-up, CLEC shall also be responsible for any extraordinary costs necessary to condition such space.
- 10.2 **SBC-13STATE** shall deliver to CLEC the requested space on or before the later of (i) 110 Calendar Days from **SBC-13STATE**'s receipt of CLEC's Collocation Order for Virtual Collocation and (ii) such other reasonable date that Parties may agree upon if it is not feasible for **SBC-13STATE** to deliver to CLEC such space within 110 Calendar Days and **SBC-13STATE** notified CLEC of this fact within ten (10) Business Days after the initial walk-through.
- 10.3 **SBC-13STATE** shall coordinate, on a case by case basis, the installation of the Virtual Collocation equipment with the CLEC based on availability and equipment delivery intervals.
- 10.4 **SBC-13STATE** shall install applicable Cross-Connects as directed by CLEC, at the rates provided in the Pricing appendix or applicable tariffs.

- 10.5 **SBC-13STATE** shall allow periodic inspections of the Virtual Collocation space where CLEC equipment is located, during construction.
- 10.6 **SBC-13STATE** shall ensure that all applicable alarm systems (e.g., power) that support CLEC equipment are operational and the supporting databases are accurate so that equipment that is in alarm will be properly identified.

11. CASUALTY LOSS

- 11.1 If the Eligible Structure or the Dedicated Space are damaged by fire or other casualty, and:
- 11.1.1 The Dedicated Spaces are not rendered untenable in whole or in part, **SBC-13STATE** shall repair the same at its expense (as herein limited) and the recurring charges shall not be abated, or
- 11.1.2 The Dedicated Spaces are rendered untenable in whole or in part and such damage or destruction can be repaired within ninety (90) days, **SBC-13STATE** has the option to repair the Dedicated Space at its expense (as herein limited) and the recurring charges shall be proportionately abated to the extent and while CLEC was deprived of the use. If the Dedicated Space cannot be repaired within ninety (90) days, or **SBC-13STATE** opts not to rebuild, then the Physical Collocation arrangement provided in the Dedicated Space shall (upon notice to CLEC within thirty (30) days following such occurrence) terminate as of the date of such damage. **SBC-13STATE** shall endeavor to relocate CLEC equipment in alternative location, or assist CLEC in developing alternative to physical location.
- 11.2 Any obligation on the part of **SBC-13STATE** to repair the Dedicated Space shall be limited to repairing, restoring and rebuilding the Dedicated Space as originally prepared for CLEC and shall not include any obligation to repair, restore, rebuild or replace any alterations or improvements made by CLEC or by **SBC-13STATE** on request of CLEC; any CLEC Telecom Equipment; or other facilities or equipment located in the Dedicated Space by CLEC or by **SBC-13STATE** on request of CLEC.
- 11.3 In the event that the Eligible Structure shall be so damaged by fire or other casualty that closing, demolition or substantial alteration or reconstruction thereof shall be necessary then, notwithstanding that the Dedicated Space e may be unaffected thereby, **SBC-13STATE**, at its option, may terminate any Physical Collocation arrangement in that Eligible Structure by giving CLEC ten (10) days prior written notice within thirty (30) days following the date of such occurrence, if at all possible.

12. RE-ENTRY

- 12.1 Unless otherwise set forth herein, if CLEC shall default in performance of any term or condition herein, and the default shall continue for thirty (30) days after receipt of written notice, or if CLEC is declared bankrupt or insolvent or makes an assignment for the benefit of creditors, **SBC-13STATE** may, immediately or at any time thereafter, without notice or demand, enter and repossess the Dedicated Space, expel CLEC and any claiming under CLEC, remove any CLEC Telecom Equipment and any other items in the Dedicated Space, forcibly if necessary, and thereupon such Physical Collocation arrangement shall terminate, without prejudice to any other remedies **SBC-13STATE** might have. **SBC-13STATE** may exercise this authority on a Dedicated Space-by-Dedicated Space basis. **SBC-13STATE** may also refuse additional applications for collocation and/or refuse to complete any pending orders for additional space or collocation by CLEC at any time thereafter.

13. LIMITATION OF LIABILITY

- 13.1 Limitation – With respect to any claim or suit for damages arising in connection with the mistakes, omissions, interruptions, delays or errors, or defects in transmission occurring in the course of furnishing service hereunder, the liability of **SBC-13STATE**, if any, shall not exceed an amount equivalent to the proportionate monthly charge to CLEC for the period during which such mistake, omission, interruption, delay, error, or defect in transmission or service occurs and continues. However, any such mistakes, omissions, interruptions, delays, errors, or defects in transmission or service which are caused or contributed to by the negligence or willful act of CLEC or which arise in connection with the use of CLEC-provided facilities or equipment shall not result in the imposition of any liability whatsoever upon **SBC-13STATE**.

13.1.1 Neither party shall be responsible to the other for any indirect, special, consequential, lost profit, or punitive damages, whether in contract or tort.

13.1.2 Each party shall be indemnified and held harmless by the other against claims and damages by any third party arising from provision of the other party's services or equipment except those claims and damages directly associated with the provision of services to the other party which are governed by the provisioning party's applicable tariffs.

13.1.3 Neither party shall have any liability whatsoever to the customers of the other party for claims arising from the provision of the other party's service to its customers, including claims for interruption of service, quality of service or

billing disputes.

13.1.4 The liability of either party for its willful misconduct, if any, is not limited by this Agreement. With respect to any other claim or suit, by a customer or by any others, for damages associated with the installation, provision, preemption, termination, maintenance, repair or restoration of service, **SBC-13STATE**'s liability, if any, shall not exceed an amount equal to the proportionate monthly charge for the affected period.

13.1.5 **SBC-13STATE** shall not be liable for any act or omission of any other carrier or customer providing a portion of a service, nor shall **SBC-13STATE** for its own act or omission hold liable any other carrier or customer providing a portion of a service.

13.1.6 When CLEC is provided service under this Agreement, **SBC-13STATE** shall be indemnified, defended and held harmless by CLEC against any claim, loss or damage arising from the customer's use of services offered under this Agreement, involving:

13.1.6.1 Claims for libel, slander, invasion of privacy, or infringement of copyright arising from the customer's own communications;

13.1.6.2 Claims for patent infringement arising from the customer's acts combining or using the service furnished by **SBC-13STATE** in connection with facilities or equipment furnished by the customer; or

13.1.6.3 All other claims arising in connection with any act or omission of in the course of using services provided pursuant to this Agreement.

13.2 **Third Parties** – CLEC acknowledges and understands that **SBC-13STATE** may provide space in or access to the Eligible Structure to other persons or entities ("Others"), which may include competitors of CLEC; that such space may be close to the dedicated collocation space, possibly including space adjacent to the dedicated collocation space and/or with access to the outside of the dedicated collocation space; and that if CLEC requests a cage around its equipment, the cage dedicated collocation space is a permeable boundary that will not prevent the Others from observing or even damaging CLEC's equipment and facilities. In addition to any other applicable limitation, **SBC-13STATE** shall have absolutely no liability with respect to any action or omission by any other, regardless of the degree of culpability of any such other or **SBC-13STATE**, and regardless of whether any claimed **SBC-13STATE** liability arises in tort or in contract. CLEC shall save and hold **SBC-13STATE** harmless from any and all costs, expenses, and claims associated with any such acts or omission by any Other

acting for, through, or as a result of CLEC.

14. INDEMNIFICATION OF SBC-13STATE

- 14.1 In addition to any other provision hereof, CLEC agrees to indemnify, defend and save harmless **SBC-13STATE** (including its officers, directors, employees, and other agents) from any and all claims, liabilities, losses, damages, fines, penalties, costs, attorney's fees or other expenses of any kind, arising in connection with CLEC's use of the dedicated collocation space, conduct of its business or any activity, in or about the dedicated collocation space, performance of any terms of this Agreement, or any act or omission of CLEC (including its officers, directors, employees, agents, contractors, servants, invitees, or licensees). Defense of any claim shall be reasonably satisfactory to **SBC-13STATE**.

15. OSHA STATEMENT

- 15.1 CLEC, in recognition of **SBC-13STATE**'s status as an employer, agrees to abide by and to undertake the duty of compliance on behalf of **SBC-13STATE** with all federal, state and local laws, safety and health regulations relating to the dedicated collocation space which CLEC has assumed the duty to maintain pursuant to this Agreement, and to indemnify and hold **SBC-13STATE** harmless for any judgments, citations, fines, or other penalties which are assessed against **SBC-13STATE** as the result of CLEC's failure to comply with any of the foregoing. **SBC-13STATE**, in its status as an employer, shall comply with all federal, state and local laws, safety and health standards and regulations with respect to the structural and those other portions of the dedicated collocation space which **SBC-13STATE** has agreed to maintain pursuant hereto.

16. NOTICES

- 16.1 Except in emergency situations, **SBC-13STATE** shall provide CLEC with written notice five (5) business days prior to those instances where **SBC-13STATE** or its subcontractors may be undertaking a major construction project in the general

area of the Dedicated Space or in the general area of the AC and DC power plants which support the Dedicated Space.

- 16.2 **SBC-13STATE** will inform CLEC by telephone of any emergency-related activity that **SBC-13STATE** or its subcontractors may be performing in the general area of the Dedicated Space occupied by CLEC or in the general area of the AC and DC power plants which support the Dedicated Space. Notification of any emergency related activity should be made to CLEC as soon as reasonably possible so that CLEC can take any action required to monitor or protect its service.

- 16.3 **SBC-13STATE** will provide CLEC with written notification within ten (10) business days of any scheduled AC or DC power work or related activity in the Eligible Structure that will cause an outage or any type of power disruption to CLEC Telecom Equipment. **SBC-13STATE** shall provide CLEC immediate notification by telephone of any emergency power activity that would impact CLEC Telecom Equipment.
- 16.4 Except as may be specifically permitted in this Agreement, any notice or demand, given by one party to the other shall be in writing and shall be valid and sufficient if dispatched by registered or certified mail, return receipt requested, postage prepaid, in the United States mails, or by facsimile transmission; provided, however, that notices sent by such registered or certified mail shall be effective on the third business day after mailing and those sent by facsimile transmission shall only be effective on the date transmitted if such notice is also sent by such registered or certified mail no later than the next business day after transmission, all addressed as follows:

If to **SBC-13STATE**:

Account Manager - Collocation
Four Bell Plaza, 9th Floor
311 S. Akard St.
Dallas, TX 75202-5398

If to CLEC: Constance L. Kirkendall, Esq.
@Link Networks, Inc.
2220 Campbell Creek Blvd.
Suite 110
Richardson, TX 75082

Either party hereto may change its address by written notice given to the other party hereto in the manner set forth above.

- 16.5 Except as may be specifically permitted in this Agreement, any payment desired or required to be given by one party to the other shall be dispatched by registered or certified mail, return receipt requested, postage prepaid, in the United States mails, and shall be addressed as follows:

If to **SBC-8STATE**

ICSC
Attn: Kathy Smith
2180 N. Glenville Dr., 2nd Floor
Richardson, TX 75082

If to **SBC-AMERITECH** AIIS Service Center
Attn: Collocation
2nd Floor
804 North Milwaukee
Milwaukee, WI 53202

If to CLEC: Constance L. Kirkendall, Esq.
@Link Networks, Inc.
2220 Campbell Creek Blvd.
Suite 110
Richardson, TX 75082

17. INSURANCE

17.1 CLEC shall, at its sole cost and expense procure, maintain, pay for and keep in force the following insurance coverage and any additional insurance and/or bonds required by law and underwritten by insurance companies having a BEST Insurance rating of A+VII or better, and which is authorized to do business in the State of **SBC-13STATE**. **SBC-13STATE** shall be named as an ADDITIONAL INSURED on general liability policy.

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED OR MATERIALLY CHANGED, THE ISSUING COMPANY WILL MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER (S)

17.1.1 Comprehensive General Liability insurance including Products/Completed Operations Liability insurance including the Broad Form Comprehensive General Liability endorsement (or its equivalent(s)) with a Combined Single limit for Bodily Injury and Property Damage of \$1 million. Said coverage shall include the contractual, independent contractors products/completed operations, broad form property, personal injury and fire legal liability.

17.1.2 If use of an automobile is required or if CLEC is provided or otherwise allowed parking space by **SBC-13STATE** in connection with Physical Collocation provided under this Appendix, automobile liability insurance with minimum limits of \$1 million each accident for Bodily Injury, Death and Property Damage combine. Coverage shall extend to all owned, hired and non-owned automobiles. CLEC hereby waives any rights of recovery against **SBC-13STATE** for damage to CLEC's vehicles while on the grounds of the Eligible Structure and CLEC will hold **SBC-13STATE** harmless and indemnify it with respect to any such damage or damage to vehicles of CLEC's employees, contractors, invitees, licensees or agents.

- 17.1.3 Workers' Compensation insurance with benefits afforded in accordance with the laws of the state of **SBC-13STATE**.
- 17.1.4 Employer's Liability insurance with minimum limits of \$100,000 for bodily injury by accident, \$100,000 for bodily injury by disease per employee and \$500,000 for bodily injury by disease policy aggregate.
- 17.1.5 Umbrella/Excess liability coverage in an amount of \$5 million excess of coverage specified above.
- 17.1.6 All Risk Property coverage on a full replacement cost basis insuring all of CLEC's personal property situated on or within the Eligible Structure or the Dedicated Space. CLEC releases **SBC-13STATE** from and waives any and all right of recovery, claim, action or cause of action against **SBC-13STATE**, its agents, directors, officers, employees, independent contractors, and other representatives for any loss or damage that may occur to equipment or any other personal property belonging to CLEC or located on or in the space at the instance of CLEC by reason of fire or water or the elements or any other risks would customarily be included in a standard all risk casualty insurance policy covering such property, regardless of cause or origin, including negligence of **SBC-13STATE**, its agents, directors, officers, employees, independent contractors, and other representatives. Property insurance on CLEC's fixtures and other personal property shall contain a waiver of subrogation against **SBC-13STATE**, and any rights of CLEC against **SBC-13STATE** for damage to CLEC's fixtures or personal property are hereby waived. CLEC may also elect to purchase business interruption and contingent business interruption insurance, knowing that **SBC-13STATE** has no liability for loss of profit or revenues should an interruption of service occur that is attributable to any Physical Collocation arrangement provided under this Appendix.
- 17.2 The limits set forth in this Section may be increased by **SBC-13STATE** from time to time during the term of a Collocation arrangement to at least such minimum limits as shall then be customary in respect of comparable situations within the existing **SBC-13STATE** structure.
- 17.3 All policies purchased by CLEC shall be deemed to be primary and not contributing to or in excess of any similar coverage purchased by **SBC-13STATE**.
- 17.4 All insurance must be in effect on or before occupancy date and shall remain in force as long as any of CLEC's Telecom Equipment or other CLEC facilities or equipment remain within the Dedicated Space or the Eligible Structure.

- 17.5 CLEC shall submit certificates of insurance and policy binders reflecting the coverages specified above prior to, and as a condition of, **SBC-13STATE**'s obligation to turn over the Dedicated Space to CLEC or to permit any CLEC-designated subcontractors into the Eligible Structure pursuant to Sections 3.7 and 3.7.3. CLEC shall arrange for **SBC-13STATE** to receive thirty-(30) day's advance written notice from CLEC's insurance company(ies) of cancellation, non-renewal or substantial alteration of its terms.
- 17.6 CLEC must also conform to recommendations made by **SBC-13STATE**'s Property Insurance Company, if any, unless a recommendation is also applicable to **SBC-13STATE** and **SBC-13STATE** does not so conform in the Eligible Structure where the Dedicated Space is located.
- 17.7 Failure to comply with the provisions of this "Insurance" Section will be deemed a material breach of this Appendix.

18. PROTECTION OF SERVICE AND PROPERTY

- 18.1 **SBC-13STATE** shall use its existing power back-up and power recovery plan in accordance with its standard policies for the specific Central Office.
- 18.2 For the purpose of notice permitted or required by this Appendix, each Party shall provide the other Party a Single Point of Contact (SPOC) available twenty-four (24) hours a day, seven (7) days a week.
- 18.3 Except as may otherwise be provided:
- 18.3.1 **SBC-13STATE** and CLEC shall each exercise reasonable care to prevent harm or damage to the other Party, its employees, agents or customers, or their property; and
- 18.3.2 Each Party, its employees, agents, or representatives agree to take reasonable and prudent steps to ensure the adequate protection of property and services of the other Party.
- 18.3.3 Each Party shall restrict access to the Eligible Structure and the Dedicated Space to employees and authorized agents of that other Party to the extent necessary to perform their specific job function.

- 18.4 **SBC-13STATE** shall use electronic access controls to protect all spaces which house or contain CLEC equipment or equipment enclosures, but if electronic controls are not available, **SBC-13STATE** shall either furnish security guards at those **SBC-13STATE** locations already protected by security guards on a seven (7) day per week, twenty-four (24) hour a day basis; and if none, **SBC-13STATE** shall permit CLEC to install monitoring equipment in the collocation space to carry data back to CLEC's work center for analysis. CLEC agrees that CLEC is responsible for problems or alarms related to CLEC's equipment or equipment enclosures located on **SBC-13STATE**'s Dedicated Space.
- 18.5 **SBC-13STATE** shall furnish CLEC with the identifying credentials to be carried by its employees and authorized agents to be paid for by the CLEC. The CLEC must maintain an updated list of all authorized employees and authorized agents on a Dedicated Space-by-Dedicated Space basis for every Eligible Structure where there are **SBC-13STATE** security guards.
- 18.6 CLEC shall comply with the security and safety procedures and requirements of **SBC-13STATE**, including but not limited to sign-in, and identification.
- 18.7 **SBC-13STATE** shall furnish CLEC with all keys, entry codes, lock combinations, or other materials or information that may be needed to gain entry into any secured CLEC space in central offices. In the event of an emergency, CLEC shall contact a SPOC provided by **SBC-13STATE** for access to spaces which house or contain CLEC equipment or equipment enclosures.
- 18.8 **SBC-13STATE** shall use reasonable measures to control unauthorized access from passenger and freight elevators to spaces which contain or house CLEC equipment or equipment enclosures.
- 18.9 **SBC-13STATE** shall use best efforts to provide notification within two (2) hours to designated CLEC personnel to indicate an actual security breach.
- 18.10 **SBC-13STATE** shall be responsible for the security of the Eligible Structure. If a security issue arises or if CLEC believes that **SBC-13STATE**'s security measures are unreasonably lax, CLEC shall notify **SBC-13STATE** and the Parties shall work together to address the problem. **SBC-13STATE** shall, at a minimum, do the following:
- 18.10.1 Where a cage is used, **SBC-13STATE** shall design collocation cages to prevent unauthorized access; provided, however, that CLEC realizes and assents to the fact that the cage will be made of wire mesh.

- 18.10.2 **SBC-13STATE** shall establish procedures for controlling access to the collocation areas by employees, security guards and others. Those procedures shall limit access to the collocation areas to **SBC-13STATE**'s employees, agents or invitees having a business need, such as a periodic review of the Dedicated Space, to be in these areas. **SBC-13STATE** shall require all persons entering the collocation areas to wear identification badges.
- 18.10.3 **SBC-13STATE** shall provide card key access to all collocation equipment areas where a secured pathway to the collocation space is made available to Collocators, along with a positive key control system for each Collocator's caged Dedicated Space. **SBC-13STATE** shall respond immediately to reported problems with CLEC key cards.
- 18.10.4 In emergency situations common courtesy will be extended between CLEC and **SBC-13STATE**'s employees, including the provision of first aid and first aid supplies.
- 18.11 CLEC shall limit access to CLEC employees directly to and from the Dedicated Space and will not enter unauthorized areas under any circumstances.

19. MISCELLANEOUS

- 19.1 Variations – In the event of variation or discrepancy between any duplicate originals hereof, including exhibits, the original Agreement held by **SBC-13STATE** shall control.
- 19.2 Governing Law – This Agreement shall be governed by the laws of the State in which the dedicated collocation space is located, without regard to the choice of law principles thereof.
- 19.3 Joint and Several – If CLEC constitutes more than one person, partnership, corporation, or other legal entities, the obligation of all such entities under this Agreement is joint and several.
- 19.4 Future Negotiations – **SBC-13STATE** may refuse requests for space in an Eligible structure if CLEC is in material breach of this Agreement, including having any past due charges hereunder. In any and each such event, CLEC hereby releases and holds **SBC-13STATE** harmless from any duty to negotiate with CLEC or any of its affiliates for any additional space or physical collocation.
- 19.5 Severability – With the exception of the requirements, obligations, and rights set forth in

this Appendix, if any of the provisions herein are otherwise deemed invalid, such invalidity shall not invalidate the entire Agreement, but rather the entire Agreement shall be construed as if not containing the particular invalid provision(s), and the rights and obligations of **SBC-13STATE** and CLEC shall be construed accordingly.

- 19.6 **Paragraph Headings and Article Numbers** – The headings of the articles and paragraphs herein are inserted for convenience only and are not intended to affect the meaning or interpretation of this Agreement.
- 19.7 **Entire Agreement** – This Agreement along with any schedules, exhibits, referenced documentation and materials set forth the entire understanding of the parties and supersedes all prior agreements, arrangements and understandings relating to this subject matter and may not be changed except in writing by the parties; provided, however, that this provision shall not affect current or pending tariffs, under investigation or otherwise, including any charges due thereunder. No representation, promise, inducement or statement of intention has been made by either party which is not embodied herein, and there are no other oral or written understandings or agreements between the parties relating to the subject matter hereof except as may be referenced herein.
- 19.8 **No Third Party Beneficiaries** – Nothing in this Agreement is intended, nor shall be deemed, to confer any rights or remedies upon any person or legal entity not a party hereto.
- 19.9 **Construction** – This Agreement shall be interpreted and governed without regard to which party drafted this Agreement.
- 19.10 **Multiple Originals** – This Agreement may be executed in multiple copies, each of which shall be deemed an original.
- 19.11 **Waver of Obligations**
- 19.11.1 Whenever this Agreement requires the consent of a party, any request for such consent shall be in writing.
- 19.11.2 Neither party shall be deemed to have waived or impaired any right, authority, or option reserved by this Agreement (including the right to demand exact compliance with every term, condition and covenant herein, or to declare any breach hereof to be a default and to terminate this Agreement prior to the expiration of its term), by virtue of any custom or practice of the parties at variance with the terms hereof or any failure, refusal or neglect to exercise any right under this Agreement or to insist upon exact compliance by the other

with its obligations hereunder, including any rule or procedure, or any waiver, forbearance, delay, failure or omission by **SBC-13STATE** to exercise any right, power or option, whether of the same, similar or different nature, with respect to one or more other Collocators.

- 19.12 **Rights of Review with Remedies** – The parties acknowledge and agree that the rates, terms, and conditions set forth in this Amendment, including among others those above relating to cageless collocation, are subject to any legal or equitable rights of review and remedies (including, but not limited to, the need to renegotiate this Amendment if any agency reconsideration and/or court review results in changes in FCC 99-48).
- 19.13 **Rights Cumulative** – The rights of a party hereunder are cumulative and no exercise or enforcement by such party of any right or remedy hereunder shall preclude the exercise or enforcement of any other right or remedy hereunder or to which such party is entitled to enforce.
- 19.14 **Binding Effect** – This Agreement is binding upon the parties hereto, their respective executors, administrators, heirs, assigns and successors in interest. All obligations by either party which expressly or by their nature survive the expiration or termination of this Agreement shall continue in full force and effect subsequent to and notwithstanding its expiration or termination and until they are satisfied in full or by their nature.
- 19.15 **Impossibility of Performance** – Neither party shall be liable for loss or damage or deemed to be in breach of this Agreement if its failure to perform its obligations results from: (a) compliance with any law, ruling, order, regulation, requirement or instruction of any federal, state or municipal government or any department or agency thereof or court of competent jurisdiction; (b) acts of God; (c) acts of omissions of the other party; (d) fires, strikes, labor difficulties, embargoes, war, insurrection or riot; or any other intervening act beyond the reasonable control of the party claiming such a delay. Any delay resulting from any of said causes shall extend performance accordingly or excuse performance, in whole or in part, as may be reasonable. In any such event, CLEC's authorized agents and contractors will comply with the Emergency Operating Procedures established by **SBC-13STATE**.
- 19.16 **Survival** – The terms, provisions, representations, and warranties contained in this Agreement that by their nature and/or context are intended to survive the performance thereof by either or both parties hereunder shall so survive the completion of performances and termination of this Agreement, including the making of any and all payments due hereunder.
- 19.17 **Successors Bound** – The conditions and agreements contained herein shall bind and inure to the benefit of **SBC-13STATE**, CLEC and their respective successors and, except as otherwise provided herein, assigns.

- 19.18 Conflict of Interest – CLEC represents that no employee or agent of **SBC-13STATE** has been or will be employed, retained, paid a fee, or otherwise has received or will receive any personal compensation or consideration from CLEC, or any of CLEC's employees or agents in connection with the arranging or negotiation of this Agreement or associated documents.
- 19.19 Non-Exclusive Remedies – No remedy herein conferred upon is intended to be exclusive of any other remedy in equity, provided by law, or otherwise, but each shall be in addition to every other such remedy.
- 19.20 Assignment – CLEC shall not assign or otherwise transfer this Agreement, neither in whole nor in part, or permit the use of any part of the dedicated collocation space by any other person or entity, without the prior written consent of **SBC-13STATE** which shall not be unreasonable withheld. Any purported assignment or transfer made without such consent shall be voidable at the option of **SBC-13STATE** including subleased or shared caged physical collocation arrangements.

20. APPLICABILITY OF OTHER RATES, TERMS AND CONDITIONS

- 20.1 Every interconnection, service and network element provided hereunder, shall be subject to all rates, terms and conditions contained in this Agreement which are legitimately related to such interconnection, service or network element. Without limiting the general applicability of the foregoing, the following terms and conditions of the General Terms and Conditions are specifically agreed by the Parties to be legitimately related to, and to be applicable to, each interconnection, service and network element provided hereunder: definitions, interpretation, construction and severability; notice of changes; general responsibilities of the Parties; effective date, term and termination; fraud; deposits; billing and payment of charges; non-payment and procedures for disconnection; dispute resolution; audits; disclaimer of representations and warranties; limitation of liability; indemnification; remedies; intellectual property; publicity and use of trademarks or service marks; no license; confidentiality; intervening law; governing law; regulatory approval; changes in End User local exchange service provider selection; compliance and certification; law enforcement; no third party beneficiaries; disclaimer of agency; relationship of the Parties/independent contractor; subcontracting; assignment; responsibility for environmental contamination; force majeure; taxes; non-waiver; network maintenance and management; signaling; transmission of traffic to third parties; customer inquiries; expenses; conflicts of interest; survival; scope of agreement; amendments and modifications; and entire agreement.